

Indiana Rules of Court

Rules for Admission to the Bar and the Discipline of Attorneys

Including Amendments Received Through January 1, 2005

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Rule 1. The Bar of Indiana

The bar of this state shall consist of all attorneys in good standing who, prior to July 1, 1931, were duly admitted to practice law by the circuit courts of this state, and all attorneys in good standing who, subsequently thereto, have been or hereafter shall be admitted to practice by this court.

Rule 2. Registration

All attorneys in active or inactive good standing, duly admitted to the practice of law in the State of Indiana shall file with the Clerk of the Supreme Court, 217 State House, Indianapolis, Indiana 46204, their correct name, office and residence address and county of residence. Said attorneys shall notify the Clerk of the Supreme Court of any change of address or name within thirty (30) days of such change. Such notice of a change of name shall be accompanied by a copy of the court record or an affidavit which states the name change. The Clerk shall keep a list of attorneys together with their correct addresses, and certify monthly such list to the Clerk of the United States District Court of the Northern District of Indiana, the clerk of the United States District Court for the Southern District of Indiana, the Executive Director of the State Board of Law Examiners and the Indiana State Bar Association. The names and addresses so certified shall be effective for all notices involving licenses as attorneys and/or disciplinary matters, and a failure to file same shall be a waiver of notice involving licenses as attorneys and/or disciplinary matters.

Amended Oct. 15, 1986, effective Jan. 1, 1987; amended Nov. 30, 198, effective Jan. 1, 1990.

Rule 2.1 Legal Interns**Section 1. Requirements.**

(a) A law student may serve as a legal intern when the following requirements are met:

1. The law student is enrolled in a school accredited pursuant to Admission and Discipline Rule 13V(A);
2. The law student has satisfactorily completed one-half of the academic requisite for a first professional degree in law;
3. The law student has received permission of the Dean of the law school to participate in a legal intern program determined to be beneficial to the law student's training pursuant to the guidelines jointly developed by the law schools of this State; and
4. The law student has completed or is enrolled in a legal ethics or professional responsibility course as set forth in Ind.Admission and Discipline Rule 13(V)(C).

(b) A law school graduate may serve as a legal intern when the following requirements are met:

1. The law graduate has received a first professional degree in law from a school accredited pursuant to Admission and Discipline Rule 13(V)(A);
2. The law graduate is eligible to take the Bar examination under Admission and Discipline Rule 13V; and
3. The law graduate has received permission from an attorney who is a member of the Bar of this State to serve as a legal intern under that attorney's direct supervision.

Section 2. Length of Intern Status.

- (a) A law student may serve as a legal intern until graduation from law school or for a lesser period if so designated by the Dean of the law school.
- (b) A law school graduate may serve as a legal intern from the date of graduation until the graduate has taken and has been notified of the results of the first examination for which the graduate is eligible under Admission and Discipline Rule 13V, or if successful on that examination, until the first opportunity thereafter for formal admission to the Bar of Indiana.

Section 3. Certification.

- (a) The Dean of a law school sponsoring a legal intern program shall advise the Indiana Supreme Court Board of Law Examiners of those students who qualify to be legal interns and the length of that internship.
- (b) An Attorney, who is a member of the Bar of this State and who wishes to sponsor and supervise a graduate as a legal intern, shall so advise the Indiana Supreme Court Board of Law Examiners; and also, the Dean of the law school from which the graduate received the first professional degree in law shall advise the Indiana Supreme Court Board of Law Examiners of the date of graduation and the date at which such graduate will be first eligible for examination under Admission and Discipline Rule 13V.

Section 4. Scope of Conduct.

A legal intern may interview, advise, negotiate for, and represent parties in any judicial or administrative proceeding in this State, provided all activities undertaken are supervised and approved by an attorney who is a member of the Bar of this State. A legal intern shall inform each client of his or her intern status, and that the intern is not a licensed attorney. A legal intern shall not interview any person represented by an attorney without the express permission of such attorney. In no event may a person (including private corporations) be charged for the services of a legal intern acting in a representative capacity. The personal presence of a supervising attorney is required in any proceeding in open court.

Amended effective Feb. 16, 1972; amended Nov. 24, 1975, effective Jan. 31, 1976; amended Dec. 23, 1976, effective Jan. 1, 1977; amended Nov. 1, 1982, effective Jan. 1, 1983; amended Nov. 16, 1984, effective Jan. 1, 1985; amended Oct. 30, 1992, effective Jan. 1, 1993; amended Dec. 18, 1995, effective Feb. 1, 1996.

Rule 3. Admission of Attorneys

Section 1. Admission of Attorneys.

The Supreme Court shall have exclusive jurisdiction to admit attorneys to practice in Indiana. Admission by the Court shall entitle attorneys to practice in any of the courts of this state.

Section 2. Limited Admission on Petition.

(a) *Requirements for Limited Admission on Petition.*

The Supreme Court, the Court of Appeals, the Tax Court, or a trial court, of this state, in the exercise of discretion, may permit a member of the bar of another state or territory of the United States, or the District of Columbia, to appear in any particular proceeding, if the court before which the attorney wishes to appear determines that there is good cause for such appearance and each of the following conditions is met:

- (1) A member of the bar of this state has appeared and agreed to act as co- counsel.
- (2) The attorney is not a resident of the state of Indiana, regularly employed in the state of Indiana, or regularly engaged in business or professional activities in the state of Indiana.
- (3) The attorney files a verified petition stating:
 - (i) The attorney's residential address, office address, and the name and address of the attorney's law firm or employer, if applicable;
 - (ii) The states or territories in which the attorney has ever been licensed to practice law, including the dates of admission to practice and any attorney registration numbers;
 - (iii) That the attorney is currently a member in good standing in all jurisdictions listed in (ii);
 - (iv) That the attorney has never been suspended, disbarred or resigned as a result of a disciplinary charge, investigation, or proceeding from the practice of law in any jurisdiction; or, if the attorney has been suspended, disbarred or resigned from the practice of law, the petition shall

specify the jurisdiction, the charges, the address of the court and disciplinary authority which imposed the sanction, and the reasons why the court should grant limited admission notwithstanding prior acts of misconduct;

- (v) That no disciplinary proceeding is presently pending against the attorney in any jurisdiction; or, if any proceeding is pending, the petition shall specify the jurisdiction, the charges and the address of the disciplinary authority investigating the charges. An attorney admitted under this rule shall have the continuing obligation during the period of such admission promptly to advise the court of a disposition made of pending charges or the institution of new disciplinary proceedings;
- (vi) A list of all proceedings, including caption and cause number, in which either the attorney, or any member of a firm with which the attorney is currently affiliated, has appeared in any of the courts of this state during the last five years. Absent special circumstances, repeated appearances by any person or by members of a single law firm pursuant to this rule shall be cause for denial of the petition;
- (vii) A demonstration that good cause exists for the appearance. Good cause shall include at least one of the following:
 - (a) the cause in which the attorney seeks admission involves a complex field of law in which the attorney is a specialist, or
 - (b) there has been an attorney-client relationship with the client for an extended period of time, or
 - (c) there is a lack of local counsel with adequate expertise in the field involved, or
 - (d) the cause presents questions of law involving the law of the foreign jurisdiction in which the applicant is licensed, or
 - (e) such other reason similar to those set forth in this subsection as would present good cause for the pro hac vice admission.
- (viii) A statement that the attorney has read and will be bound by the Rules of Professional Conduct adopted by the Supreme Court, and that the attorney consents to the jurisdiction of the State of Indiana, the Indiana Supreme Court, and the Indiana Supreme Court Disciplinary Commission to resolve any disciplinary matter that might arise as a result of the representation.
- (ix) A statement that the attorney will file a Notice of Pro Hac Vice Admission with the clerk of this court in compliance with Section (b) of this rule within thirty (30) days after the court grants permission to appear in the proceeding.

(b) *Notice of Pro Hac Vice Status.*

All attorneys admitted pro hac vice under the provisions of Section 2(a) shall file a Notice with the clerk of the Supreme Court within thirty (30) days after a court grants permission to appear in the proceeding. A separate Notice must be filed for each proceeding in which a court grants permission to appear. Failure to file the notice within the time specified will result in automatic exclusion from practice within this state. The notice shall include the following:

- (1) A current statement of good standing issued to the attorney by the highest court in each jurisdiction in which the attorney is admitted to practice law;
- (2) A copy of the verified petition requesting permission to appear in the court proceedings, along with the court order granting permission;
- (3) A list of all grievances, petitions, or complaints filed against the attorney with any disciplinary authority of any jurisdiction, with the determination thereon.

(c) *Registration Fee for Attorney Admitted Pro Hac Vice.*

At the time of the filing of the Notice required by section 2(b) of this Rule, the attorney shall pay, to the clerk of the Supreme Court the annual registration fee required of members of the bar of this state as set out in Admission and Discipline Rule 23, Section 21. Thereafter, if the attorney continues to appear in any case pending as of

the first day of a new calendar year, the attorney will continue to pay the required registration fee, which shall be due within thirty (30) days of the start of that calendar year.

(d) **Responsibilities of Attorneys.**

Members of the bar of this state serving as co-counsel under this rule shall sign all briefs, papers and pleadings in the cause and shall be jointly responsible therefor. The signature of co-counsel constitutes a certificate that, to the best of co-counsel's knowledge, information and belief, there is good ground to support the signed document and that it is not interposed for delay or any other improper reason.

Amended effective April 14, 1965; amended Nov. 30, 1989, effective Jan. 1, 1990; amended Dec. 4, 1998, effective Jan. 1, 1999; amended Sep. 30, 2004, effective Jan. 1, 2005.

Official Commentary

The amendments apply only to requests for leave to appear *pro hac vice* filed on or after January 1, 1999.

If an attorney files the notice with the Clerk of the Supreme Court and pays the fee required by subpart (b) of the Rule in one case in any given calendar years, the attorney need not pay another fee for any other case in which the attorney may be appearing *pro hac vice* during that same calendar year.

If an attorney files the notice with the Clerk of the Supreme Court and pays the fee required by subpart (b) of the Rule in a particular calendar year, and a new calendar year begins and the attorney is still appearing in any case *pro hac vice*, the attorney must file a new notice and pay a fee within 30 days of the start of the new calendar year.

If more than one (1) attorney from one firm is appearing *pro hac vice* in a particular case on behalf of the same client, each attorney appearing nevertheless has an individual obligation to comply with the Rule as amended.

Rule 4. Roll of Attorneys

A record shall hereafter be made and entered on the order book of this court of the admission, enrollment, resignation, suspension, disbarment, reinstatement, and recertification of any and all members of the bar of this court. In addition, the clerk of this court shall keep, and from time to time revise, a permanent alphabetical card index roll of the members of the bar of this court who have been enrolled as such, showing the name, address, and date of admission of each living member.

Rule 5. Foreign Legal Consultants

(1) **General Regulation as to Licensing.** In its discretion, the Supreme Court may license to practice in Indiana as a foreign legal consultant, without examination, an applicant who:

- (a) is a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as attorneys or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority;
- (b) for at least five of the seven years immediately preceding his or her application has been a member in good standing of such legal profession and has actually been engaged in the practice of law in the said foreign country or elsewhere substantially involving or relating to the rendering of advice or the provision of legal services concerning the law of the said foreign country;
- (c) possesses the good moral character and general fitness requisite for a member of the bar of Indiana; and
- (d) intends to practice as a foreign legal consultant in Indiana and to maintain an office in this State for that purpose.

(2) **Proof Required.** An applicant under this Rule shall file with the State Board of Law Examiners:

- (a) a certificate from the professional body or public authority in such foreign country having final jurisdiction over professional discipline, certifying as to the applicant's admission to practice and the date thereof, and as to his or her good standing as such attorney or counselor at law or the equivalent;
 - (b) a letter of recommendation from one of the members of the executive body of such professional body or public authority or from one of the judges of the highest law court or court of original jurisdiction of such foreign country and a letter of recommendation from at least one attorney who is licensed to practice law in the State of Indiana other than as a foreign legal consultant;
 - (c) a duly authenticated English translation of such certificate and such letter if, in either case, it is not in English;
 - (d) the National Conference of Bar Examiners questionnaire and affidavit along with the payment of the requisite fee and such other evidence as to the applicant's educational and professional qualifications, good moral character and general fitness, and compliance with the requirements of Section 1 of this Rule as the State Board of Law Examiners may require;
 - (e) a copy or summary of the law and customs of the foreign country that describes the opportunity afforded to members of the Bar of Indiana to establish offices for the giving of legal advice to clients in such foreign country, together with an authenticated English translation if it is not in English; and
 - (f) the requisite documentation evidencing compliance with the immigration laws of the United States.
- (3) Reciprocal Treatment of Members of the Bar of Indiana. In considering whether to license an applicant to practice as a foreign legal consultant, the Supreme Court may in its discretion take into account whether a member of the bar of Indiana would have a reasonable and practical opportunity to establish an office for the giving of legal advice to clients in the applicant's country of admission. Any member of the bar who is seeking or has sought to establish an office in that country may request the court to consider the matter, or the Court may do so sua sponte.
- (4) Scope of Practice. A person licensed to practice as a foreign legal consultant under this Rule shall be limited to rendering professional legal advice on the law of the foreign country where the foreign legal consultant is admitted to practice. A foreign legal consultant shall not:
- (a) appear for a person other than himself or herself as attorney in any court, or before any magistrate or other judicial officer, in this State other than upon admission pro hac vice;
 - (b) prepare any instrument effecting the transfer or registration of title to real estate located in the United States of America;
 - (c) prepare:
 - (i) any will or trust instrument effecting the disposition on death of any property located in the United States of America and owned by a resident thereof; or
 - (ii) any instrument relating to the administration of a decedent's estate in the United States of America;
 - (d) prepare any instrument in respect of the marital or parental relations, rights or duties of a resident of the United States of America, or the custody or care of the children of such a resident;
 - (e) render professional legal advice on the law of this State or of the United States of America (whether rendered incident to the preparation of legal instruments or otherwise) except on the basis of advice from a person duly qualified and entitled (otherwise than by virtue of having been licensed under this Rule) to render professional legal advice in this State;
 - (f) be, or in any way hold himself or herself out as, a member of the bar of Indiana; or
 - (g) use any title other than "foreign legal consultant" and affirmatively state in conjunction therewith the name of the foreign country in which he or she is admitted to practice (although he or she may additionally identify the name of the foreign or domestic firm with which he or she is associated).

- (5) Rights and Obligations. Subject to the limitations set forth in Section 4 of this Rule, a person licensed as a legal consultant under this Rule shall be considered a lawyer affiliated with the bar of this State and shall be entitled and subject to:
- (a) the rights and obligations set forth in the Indiana Rules of Professional Conduct or arising from the other conditions and requirements that apply to a member of the bar of Indiana under the Indiana Rules of Court; and
 - (b) the rights and obligations of a member of the bar of Indiana with respect to:
 - (i) affiliation in the same law firm with one or more members of the bar of Indiana with respect to:
 - (A) employing one or more members of the bar of Indiana;
 - (B) being employed by one or more members of the bar of Indiana or by any partnership or professional corporation which includes members of the bar of this State or which maintains an office in this State;
 - (C) being a partner in any partnership or shareholder in any professional corporation which includes members of the bar of Indiana or which maintains an office in this State; and
 - (ii) attorney-client privilege, work product privilege and similar professional privileges.
- (6) Disciplinary Provisions. A person licensed to practice as a legal consultant under this Rule shall be subject to professional discipline in the same manner and to the same extent as members of the bar of Indiana and to this end:
- (a) every person licensed to practice as a foreign legal consultant under these Rules:
 - (i) shall be subject to control by the Supreme Court and to censure, suspension, removal or revocation of his or her license to practice by the Supreme Court and shall otherwise be governed by the Admission and Discipline Rules; and
 - (ii) shall execute and file with the Supreme Court, in such form and manner as such court may prescribe:
 - (A) his or her commitment to observe the Rules of Professional Conduct and the Indiana Rules of Court to the extent applicable to the legal services authorized under Section 4 of this Rule;
 - (B) a written undertaking to notify the court of any change in such person's good standing as a member of the foreign legal profession referred to in Section 1(a) of this Rule and of any final action of the professional body or public authority referred to in Section 2(a) of this Rule imposing any disciplinary censure, suspension, or other sanction upon such person; and
 - (C) a duly acknowledged instrument, in writing, setting forth his or her address in this State and designation the clerk of such court as his or her agent upon whom process may be served, with like effect as if served personally upon him or her, in any action or proceeding thereafter brought against him or her and arising out of or based upon any legal services rendered or offered to be rendered by him or her within or to residents of Indiana, whenever after due diligence service cannot be made upon him or her at such address or at such new address in this State as he or she shall have filed in the office of such clerk by means of a duly acknowledged supplemental instrument in writing.
 - (b) service of process on such clerk, pursuant to the designation filed as aforesaid, shall be made by personally delivering to and leaving with such clerk, or with a deputy or assistant authorized by him or her to receive such service, at his or her office, duplicate copies of such process together with a fee of ten dollars (\$10). Service of process shall be complete when such clerk has been so

served. Such clerk shall promptly send one of such copies to the foreign legal consultant to whom the process is directed, by certified mail, return receipt requested, addressed to such foreign legal consultant at the address specified by him or her as aforesaid.

- (7) Application and Renewal Fees. An applicant for a license as a foreign legal consultant under this Rule shall pay an application fee which shall be equal to the fee required to be paid by a person applying for admission as a member of the bar of Indiana under Ind.Admission and Discipline Rule 6. A person licensed as a foreign legal consultant shall pay the annual registration fee required by Admis.Disc.R. 23(21).
- (8) Revocation of License. In the event that a person licensed as a legal consultant under this Rule no longer meets the requirements for licensure set forth in Section 1(a) or 1(c) of this rule, the license granted to such person hereunder is revoked.
- (9) Admission to Bar. In the event that a person licensed as a foreign legal consultant under this Rule is subsequently admitted as a member of the bar of Indiana under the provisions of the Rules governing such admissions, the license granted to such person hereunder shall be deemed superseded by the license granted to such person to practice law as a member of the bar of Indiana.
- (10) Application for Waiver of Provisions. The Supreme Court, upon application, may in its discretion vary the application of or waive any provision of this Rule where strict compliance will cause undue hardship to the applicant. Such application shall be in the form of a verified petition setting forth the applicant's name, age and residence address, the facts relied upon and a prayer for relief.

Adopted effective Jan. 1, 1994

Rule 6. Admission on Foreign License

Section 1. Provisional License. A person who has been admitted to practice law in the highest court of law in any other state (herein defined as state or territory of the United States or the District of Columbia), may be granted a provisional license to practice law in Indiana upon a finding by the State Board of Law Examiners that said person has met each of the following conditions:

- (a) The applicant has actively engaged in the practice of law for a period of at least five (5) of the seven (7) years immediately preceding the date of application. "Actively engaged in the practice of law" shall mean:
 - (i) performing legal services for the general public as a lawyer for at least 1,000 hours per year; or
 - (ii) employment by a state or local governmental or business entity as a lawyer performing duties for which admission to the practice of law is a prerequisite for at least 1,000 hours per year; or
 - (iii) performing the duties of a teacher of law on a full-time basis in an ABA accredited law school; or
 - (iv) serving as a judge of a court of record on a full-time basis; or
 - (v) serving on a full-time salaried basis as an attorney with the federal government or a federal governmental agency including service as a member of the Judge Advocate General's Department of one of the military branches of the United States; or
 - (vi) a combination of the above..
- (b) The practice of law must have been in the jurisdiction where the applicant is licensed and during the period of licensure unless the practice falls under (iii) or (v) above. Practice under a business counsel license admission as defined in Section 2 shall apply toward years of practice for a maximum of five (5) years so long as the application for provisional license admission is made within seven (7) years of the grant of the initial business counsel license.
- (c) The applicant is a member in good standing of the bar(s) of admission.
- (d) The admission of the applicant is in the public interest.
- (e) The applicant meets the character and fitness requirements of Indiana.
- (f) The applicant has paid or tendered the required fee.
- (g) The applicant has not failed the Indiana Bar Examination within five (5) years of the date of application.

- (h) The applicant has graduated from an ABA accredited law school.
- (i) The applicant has filed an affidavit of the applicant's intent to engage in the practice of law as defined in Section 1(a) predominantly in Indiana. "Predominantly" means that the applicant's practice in Indiana must exceed, or be equal to, his or her practice in all other jurisdictions combined.

Section 2. Business Counsel License. A person who has been admitted to practice law in the highest court of law in any other state who becomes a resident of Indiana to accept or continue employment by a person or entity engaged in business in Indiana other than the practice of law, whose practice complies with Section 1(a)(ii), and is, or will be, devoted solely to the business of such employer, and who receives, or will receive, his or her entire compensation from such employer for applicant's legal services, may be granted a business counsel license to practice law in Indiana, without examination, so long as:

- a) such person remains in the employ of, and devotes his or her time as set forth in Section 1(a)(ii) to the business of, and receives compensation for legal services from no source other than applicant's said employer;
- b) the applicant is a member in good standing of the bar(s) of admission;
- c) the admission of the applicant is in the public interest;
- d) the applicant meets the character and fitness requirement;
- e) the applicant has paid or tendered the required fee;
- f) the applicant has not failed the Indiana Bar Examination within five (5) years of the date of application; and,
- g) the applicant has graduated from an ABA accredited law school.

Upon the transfer of such employment outside the State of Indiana, the right to practice law in Indiana shall terminate. Upon the termination of such employment, the right to practice law in Indiana shall terminate unless 1) such business counsel license admittee has secured employment from another person or entity within three (3) months of their termination, which employment meets the criteria of Section 2; or 2) such business counsel license admittee shall have been admitted to practice law in this state pursuant to some other rule.

Section 3. Fees. The applicant shall submit his application accompanied by a fee of eight hundred dollars (\$800.00). The Executive Director of the Board may refer said application to the National Conference of Bar Examiners for investigation and report. The Board is authorized to pay all expenses incident to the investigation of the qualifications of the applicant. However, in the event said application is considered and denied by the Board prior to referral to the National Conference, the Board is authorized to refund to the applicant one half (1/2) of the application fee. No part of the application fee shall otherwise be refunded.

Section 4. Renewal of Provisional License and Business License. A provisional license admission on a foreign license may continue in force for one year, and may be renewed for a like period upon the submission of such verified individualized information as will demonstrate to the satisfaction of the Board that the applicant has during the past year been both (a) engaged in the practice of law as defined in Section 1(a), and (b) predominantly in Indiana. Each application for renewal of provisional license admission shall be accompanied by a fee of fifty dollars (\$50.00). Upon the fifth consecutive renewal of the provisional license granted to the applicant, the admission to practice shall be permanent. A business counsel license may continue in force for one year, and may be renewed for a like period for a maximum of four (4) additional years upon the submission of such verified individualized information as will demonstrate to the satisfaction of the Board that the applicant has during the past year been employed under the terms of the business counsel license and will continue to be so employed. A fee of fifty dollars (\$50) shall accompany each application for renewal of a business counsel license.

Section 5. Education Requirements for Provisional License and Business Counsel License. Within twelve (12) months of an applicant's initial provisional license or business counsel license admission, the applicant shall attend an annual Indiana law update forum, which forum shall provide a minimum of 12 hours of continuing legal education which has been approved by the Indiana Commission For Continuing Legal Education. Applicants admitted on provisional license or business counsel license are subject to,

and shall comply with, the Indiana Rules For Admission to the Bar and the Discipline of Attorneys, the Rules of Professional Conduct, and all other requirements of statute and Supreme Court Rules.

Section 6. *Application of Rules and Appearance Before Board.* The provisions of Rule 12, Sections 7, 8, and 9 apply to admission under this Rule. An applicant for admission on foreign license who is denied admission may request an appearance before the Board and a hearing thereafter.

Amended May 10, 1961; Oct. 25, 1963; Jan. 8, 1970; Oct. 27, 1971; Jan. 24, 1972, Feb. 16, 1972; July 30, 1973; Oct. 1, 1973; Aug. 31, 1976, amended Dec. 30, 1976, effective Jan. 1, 1977; Dec. 14, 1977, effective Jan. 1, 1978; amended Dec. 4, 1980; Nov. 1, 1985; amended April 14, 1988, effective Jan. 1, 1989; Nov. 30, 1989, effective Jan. 1, 1990.. Amended Dec. 23, 1996, effective March 1, 1997. Amended July 1, 2003, effective January 1, 2004; amended Sep. 30, 2004, effective Jan. 1, 2005.

Rule 7. Certificates

An applicant admitted through examination shall be entitled to a certificate of his admission upon taking the oath of attorneys and being entered on the roll of attorneys by the clerk of this court.

Amended Nov. 4, 1991, effective Jan. 1, 1992; amended Feb. 12, 1992, effective Jan. 1, 1992.

Rule 8. [Vacated June 23, 1971]

Rule 9. State Board of Law Examiners

The State Board of Law Examiners of the State of Indiana shall consist of ten (10) members of the bar, two (2) from each Supreme Court judicial district, who shall be appointed by this Court to serve for terms of five (5) years and until their successors are appointed. The terms of two (2) members of such Board shall expire on December 1 of each year. The Board shall elect annually, a president, a vice-president, a secretary, and a treasurer. These officers shall take office on December 1. The Board shall maintain its office in a location determined by the Indiana Supreme Court. The Court shall appoint a person to serve as Executive Director to said Board.

Amended Oct. 15, 1986, effective Jan. 1, 1987.

Rule 10. Expenses and Compensation of Members of Board

The board shall have authority to prescribe such forms and adopt such rules as are necessary, not inconsistent herewith. The board shall maintain in a separate fund the fees received under these rules which shall be expended only upon the approval of the Supreme Court. The members of the board of law examiners shall be allowed their necessary expenses and a reasonable compensation which shall be fixed from time to time by the court.

Amended effective Jan. 24, 1972; amended effective Sept. 24, 1974; amended effective Aug. 31, 1976.

Rule 11. Forms

Application for admission and all information in reference thereto shall be upon forms furnished by the secretary of the board.

Rule 12. Committee on Character and Fitness

Section 1. The State Board of Law Examiners shall inquire into and determine the character, fitness and general qualifications to be admitted to practice law as a member of the bar of the Supreme Court of Indiana. It is a condition precedent to admission, whether upon examination or upon foreign license, that the Board report and certify to the Supreme Court that the applicant, after due inquiry, has been found to possess the necessary good moral character and fitness to perform the obligations and responsibilities of an

attorney practicing law in the State of Indiana, and has satisfied all general qualifications for admission.

Section 2. The applicant must be at least 21 years of age and possess good moral character and fitness to practice law. The applicant shall have the burden of proving that he or she possesses the requisite good moral character and fitness to practice law. The applicant has the absolute duty to inform the Board with full candor of any facts which bear, even remotely, upon the question of the applicant's character and fitness and general qualifications to practice law, which obligation continues from the date of application to the time of admission, and includes the obligation to promptly and to fully inform the Board of any such facts occurring or discovered prior to admission. The term "good moral character" includes, but is not limited to, the qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, and of the laws of this State and of the United States, and a respect for the rights of other persons and things, and the judicial process. Anyone who has been convicted of a felony prima facie shall be deemed lacking the requisite of good moral character as defined in this section. The term "fitness" includes, but is not limited to, the physical and mental suitability of the applicant to practice law in Indiana. In satisfying the requirements of good moral character and fitness, applicants should be persons whose record of conduct justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them, and whose record demonstrates the qualities of honesty, trustworthiness, diligence, or reliability. In the determination of good moral character and fitness, relevant considerations may include, but are not limited to the following: unlawful conduct; academic misconduct; making of false statements, including omissions; misconduct in employment; acts involving dishonesty, fraud, deceit or misrepresentation; abuse of legal process; neglect of financial responsibilities; violation of an order of a court; evidence of mental or emotional instability; evidence of drug or alcohol dependency; denial of admission to the bar in another jurisdiction on character and fitness grounds; and disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction.

General qualifications are those requirements to be admitted to the practice of law established by these rules, other than those dealing with examinations and character and fitness.

Section 3. No person who advocates the overthrow of the government of the United States or this state by force, violence or other unconstitutional or illegal means, shall be certified to the Supreme Court of Indiana for admission to the bar of the court and a license to the practice of law.

Section 4. There shall be appointed by this Court a Committee on Character and Fitness in each Supreme Court judicial district, consisting of at least one attorney-at-law from each county in such district. The members of such committee shall continue in office until their successors are appointed. The State Board of Law Examiners shall send a copy of each application for admission to the bar of this state to the local member of the Committee on Character and Fitness in the Indiana county which the applicant selects. A member of the committee, or some member designated by the State Board of Law Examiners, shall require the personal attendance of each applicant before the member, and inquire into the question as to whether or not the applicant is possessed of those requisites of good moral character and fitness, has adequate knowledge of the standards and ideals of the profession, and is familiar with and agrees to be bound by the Indiana Supreme Court Rules of Professional Conduct, all as necessary to qualify him to serve as an attorney. The member of the committee shall make such further inquiry into the matter as the member sees fit. At least thirty (30) days before the examination, the member of the committee conducting the inquiry, or promptly, if upon application for admission upon foreign license, the Board member conducting the inquiry shall make a finding: (1) That the applicant is familiar with and agrees to be bound by the Indiana Supreme Court Rules of Professional Conduct and that such Applicant is a person of good moral character and is fit to practice law in Indiana; or (2) That the member is unable to certify that the Applicant is a person of good moral character and is fit to practice law in Indiana, setting forth the reasons for this conclusion; or (3) That there is some question as to the Applicant's good moral character and/or fitness to practice law in Indiana and therefore recommends that the State Board of Law Examiners conduct a personal inquiry with the Applicant, stating the reasons for the member's conclusion. The committee member shall forward such findings and recommendations and all papers filed in connection therewith to the State Board of Law Examiners, which Board shall at its next meeting review said findings, make such further inquiry as it sees fit, and take such action as the matter requires.

Section 5. The Board may, upon its own motion, require an applicant to appear before the full Board, or a committee composed of members of the Board, for inquiry into the applicant's character and fitness. The Board may continue such appearance and require that the applicant submit additional information, evaluations or proofs before concluding such appearance.

Section 6. The Board of Law Examiners shall make a finding regarding each applicant:

- (a) That the applicant possesses the requisite good moral character and fitness and has satisfied the general qualifications to be eligible to be admitted to practice law in Indiana, subject to continued qualification; or
- (b) That the applicant has failed to sustain his or her burden of proof that the applicant possesses good moral character and fitness, and has satisfied all of the general qualifications to be admitted to the practice of law, in which case the Board may find that the applicant should not be permitted to reapply for admission to practice law or should be permitted to reapply only after a specific period of time; or
- (c) That the Board has special concerns about the proof of applicant's moral character and fitness based upon evidence of drug, alcohol, psychological or behavioral problems, but in lieu of denying admission to the bar finds that the applicant has satisfied the Board as to his or her character and fitness, and has also satisfied the general qualifications, sufficiently to be eligible for conditional admission upon such terms and conditions as specified by the Board, said conditional admission to be administered by the Board over a period of time not to exceed five (5) years. The conditional admission shall be governed by Internal Rules and Policies adopted by the Board. The fact that the admission is conditional shall be confidential; or
- (d) That the Board has special concerns about the proof of applicant's moral character and fitness based upon evidence of drug, alcohol, psychological or behavioral problems, but in lieu of denying admission to the bar finds that the applicant's admission be withheld for a specified period of time, not to exceed two (2) years, to allow the applicant to establish and prove rehabilitation. If at the end of the specified period of time the applicant shall have satisfied requirements to be eligible for admission to practice law, barring subsequent disclosure of matters adversely reflecting upon the applicant's character and fitness, the applicant will be eligible for admission upon passing the examination requirements. The Board may permit the applicant to take any examination administered during that period; or
- (e) That the Board has special concerns about the proof of applicant's moral character and fitness based upon evidence of drug, alcohol, psychological or behavioral problems, but in lieu of denying admission to the bar finds that the behavior giving rise to the special concern has occurred of such recent date to prevent the Board from determining whether the applicant has sufficiently established his or her qualifications and the Board extends the time for further inquiry for a reasonable time, not to exceed one (1) year, and the Board may permit the applicant to take any examination administered during that period.

Section 7. If the Board finds that the applicant is not eligible for admission, or if the Board finds that an applicant is eligible for admission only upon condition under Section 6(c), whether after inquiry into the applicant's character and fitness to practice law, or determination that the applicant has failed to establish satisfaction of general qualifications, or in the case of an applicant for admission on foreign license, failure to prove that he or she has met the requirements of Rule 6, Sections 1 through 3, or if a conditional admittee has violated the terms of conditional admission, the applicant or conditional admittee may request a hearing under Section 9 of this Rule by filing a written request for such hearing with the Board within thirty (30) days of mailing of notice to the applicant of the finding of the Board.

Section 8. The necessity of a hearing as provided in Section 9 of this Rule may be dispensed with by the Board where the evidence is not in dispute and the subject matter of the hearing may be submitted to the Supreme Court upon written findings and specifications adopted by the Board.

Section 9. If the applicant or conditional admittee timely requests a hearing, or if the State Board of Law

Examiners in connection with further inquiry shall deem it advisable to hold a hearing, the State Board of Law Examiners will schedule a hearing pursuant to the provisions of this Section.

- (a) In such event, the Board may petition the Court to appoint a hearing panel from the members of the Board, consisting of three members. Said panel shall select from among its members a presiding officer and shall schedule and conduct such hearing. All of the above rules and regulations with respect to the action of the Board shall apply at said hearing.
- (b) If, in connection with said further inquiry, the State Board of Law Examiners shall deem it advisable to hold a hearing, the applicant or conditional admittee shall be informed of the substance of the matter to be inquired into by written notice served on the applicant or conditional admittee by mailing such notice to the applicant or conditional admittee at such person's last known address as shown by the Board's record by certified mail, return receipt requested, at least ten (10) days before the date set for said hearing.
- (c) A record of the proceedings shall be taken by electronic recording equipment provided by the Board. If necessary this record shall be transcribed by the staff of the Executive Director.
- (d) The panel shall report its findings to the Board for consideration and decision.
- (e) The State Board of Law Examiners, at any such hearing, or otherwise, shall have the power to administer oaths, to issue subpoenas to require attendance at said hearing and for the production of documentary or other evidence. In case of the refusal of a witness to attend said hearing, to produce documentary or other evidence or to testify, the said Board shall certify such failure to the Court, and such witness shall be dealt with as for a contempt. Witnesses shall receive the fees and mileage provided by law for witnesses in civil cases. The Board may employ outside legal counsel to represent the interest of the State of Indiana at such hearing.
- (f) The applicant or conditional admittee shall have the right to attend such hearing in person, to examine and cross-examine witnesses and otherwise participate in said hearing and to require the attendance of witnesses and production of documentary and other evidence by subpoena. An applicant or conditional admittee may be represented by counsel at such person's expense.
- (g) Upon the conclusion of said hearing, the State Board of Law Examiners shall enter findings as provided in Section 6(a) through (e) of this Rule.
- (h) In the event the Board makes a finding other than that the applicant or conditional admittee does possess good moral character and fitness and has satisfied the general qualifications to be admitted to practice as provided in Section 6(a) of this Rule, a final report of the proceedings, including specific findings of fact, conclusion and recommendations shall be prepared. The Board shall notify the applicant or conditional admittee and all counsel of record of the action of the Board, including with such notice a copy of the final report.

Section 10. If, after following the hearing procedures in Sections 5, 8 & 9 of this Rule, the Board determines that a conditional admittee has violated any of the conditions of the admission, or if the Board determines that any applicant admitted under these rules falsified or failed to fully inform the Board of facts bearing upon the applicant's character and fitness and general qualifications to practice law prior to admission, the Board may impose additional conditions, including without limitation, an additional term of conditional admission for up to five (5) years, or the Board may certify such findings to the Supreme Court of Indiana with the recommendation that the Court revoke such admission, along with a recommended period of time before the conditional admittee can submit a new application for admission. A conditional admittee whose conditional admission has been revoked by the Supreme Court shall not be readmitted, except upon a new application and examination, after the expiration of the revocation period set by order of the Supreme Court.

Section 11. Any person who has been accepted for admission to a law school accredited as required in Rule 13V may file an application with the State Board of Law Examiners, on such forms as the Board shall provide, for determination of his character and fitness to practice law in the State of Indiana in advance of the completion of his legal education. His application shall be processed and the final determination made through the same procedures set out above for the handling of submissions by applicants who have completed or are about to complete their formal legal education. Each application shall be accompanied by a fee of fifty dollars (\$50.00). Thereafter, upon filing an application for admission to the Bar of this State,

said person shall again be screened by a member of the Committee on Character and Fitness in the proper county as required by this Rule 12, to determine the applicant's continued qualification for admission to the Bar of Indiana as far as his character and fitness is concerned.

Amended effective June 2, 1970; amended Nov. 24, 1975, effective Jan. 31, 1976; amended Dec. 23, 1976, effective Jan. 1, 1977; amended Nov. 30, 1989, effective Jan. 1, 1990. Amended Dec. 23, 1996, effective March 1, 1997.

Rule 13. Educational Requirements for Admission to Examination

Section 1. Authority. Constitution of Indiana, Article 7, Section 4, and this court's inherent power.

Section 2. Purpose. The purpose of this rule is to establish minimal educational prerequisites for the effective assistance of counsel in civil or criminal matters and cases in the State of Indiana, which minimal educational prerequisites shall be held by all persons admitted to the bar of this Court by written examination after the effective date of this rule.

Section 3. Notice. Notice is hereby given to all persons who seek admission to the bar of this Court by written examination, after the effective date of this Rule, that minimal educational prerequisites for the effective assistance of counsel in civil or criminal matters and cases are established by this rule.

Section 4. Educational Qualifications. Each applicant for admission to the bar of this Court by written examination shall be required to establish to the satisfaction of the State Board of Law Examiners that the applicant is:

- (A) A graduate of a law school located in the United States which at the time of the applicant's graduation was on the approved list of the Council of Legal Education and Admission to the Bar of the American Bar Association (the Supreme Court of Indiana reserves the right to disapprove any school regardless of ABA approval);
- (B) A person who satisfactorily has completed the law course required for graduation and furnishes to the Board of Law Examiners a certificate from the Dean thereof, or a person designated by the Dean, that the applicant will receive the degree as a matter of course at a future date, pursuant to Indiana Rules of Admission and Discipline, Rule 15; and
- (C) A person who has completed in an approved school of law two cumulative semester hours of legal ethics or professional responsibility.

Section 5. Early Examination Rule. An applicant, who has fewer than five (5) hours to complete and is within one hundred (100) days of graduation from an approved law school, satisfactorily has passed work in the subject matter as set forth in the provisions of this section, and otherwise has completed all requirements for admission to the bar, shall be entitled to take the examination for admission to the bar, but may not be admitted to the bar of the Court until said applicant has met all other requirements for admission and has graduated from an approved law school.

Section 6. Certification of Educational Qualifications. Certification of the completion of the subject matter requirements under the provision of section 4 of this rule shall be made by the dean of the law school, or his designee, who shall have faculty status. Said certification shall be filed with the board twenty (20) days prior to the date of the examination.

Amended effective Feb. 15, 1954; amended effective Oct. 25, 1963; amended effective Oct. 27, 1971; amended effective July 30, 1973; amended Dec. 18, 1973, effective Feb. 1, 1974; amended effective Feb. 19, 1974; amended effective March 6, 1974; amended Nov. 24, 1975, effective Jan. 31, 1976; amended Dec. 23, 1976, effective Jan. 1, 1977; amended Dec. 30, 1976, effective Jan. 1, 1977; amended Dec. 14, 1977, effective Jan. 1, 1978; amended Nov. 1, 1982, effective Jan. 1, 1983; amended Oct. 15, 1986, effective Jan. 1, 1987; amended April 14, 1988, effective Jan. 1, 1989; amended Nov. 30, 1989, effective Jan. 1, 1990; amended effective Jan. 8, 1990; amended Oct. 30, 1992, effective Jan. 1, 1993; amended Dec.

18, 1995, effective Feb. 1, 1996; amended effective Jan. 24, 1996. Amended Dec. 23, 1996, effective March 1, 1997.

Rule 14. Review

Review of final action by the State Board of Law Examiners shall be as follows:

Section 1. The State Board of Law Examiners shall adopt such procedure for review of an applicant, aggrieved by failure of said board to award said applicant a satisfactory grade upon the bar examination, as shall be approved by the Supreme Court of Indiana. All applicants who have achieved a combined scaled score of 255 to 263 shall be eligible to appeal. The eligible examinees must make a written request to appeal on forms provided by the Board within fourteen (14) days of the date of mailing by the Board of the eligible examinee's results. No response other than the written request to appeal is permitted. The President of the Board shall designate certain of the Board's members as "Appeals Reviewers." The Appeals Reviewers shall consider and decide all appeals of bar examination results. In the appeals process, all of an eligible examinee's responses shall be subject to review by the Appeals Reviewers. Multistate Bar Examination scores will also be available to the Appeals Reviewers. Eligible examinees that are deemed to have passed after review shall be treated as having passed that administration of the Indiana Bar Examination. No change in score shall be effectuated. The determination by the Appeals Reviewers whether to treat an appealing applicant as having passed the bar examination shall be final, subject to general principles of procedural due process.

Section 2. Any applicant aggrieved by the final action of the State Board of Law Examiners in refusing to recommend to the Supreme Court of Indiana the admission of the applicant to practice law in Indiana for any reason other than the failure to pass any examination as set forth in section (1) may, within twenty (20) days of receipt of notification setting forth the reason for refusal, which notice shall be sent to the applicant by certified mail with return receipt requested, file a petition with the Supreme Court of Indiana requesting review by this Court of such final determination, and setting forth specifically therein the reasons, in fact or law, assigned as error in the Board's determination, and the Court may order further consideration of the application, in which event the State Board of Law Examiners shall promptly transmit to the Court the complete file relating to such applicant and his or her application, including the transcript of the record of any hearing held by the State Board of Law Examiners relating thereto, and the Court shall enter such order as in its judgment in proper, which shall thereupon become final. The petition for review must be accompanied by a fifty dollar (\$50.00) filing fee unless the petitioner previously paid an application fee to the State Board of Law Examiners as provided in these rules.

Adopted effective March 10, 1953; amended effective Feb. 9, 1971; amended Aug. 21, 1972, effective Sept. 1, 1972; amended effective March 5, 1973; amended Nov. 24, 1975, effective Jan. 31, 1976; amended Dec. 5, 1994, effective Feb. 1, 1995. Amended Dec. 22, 2000, effective Jan. 1, 2001; amended Sep. 30, 2004, effective Jan. 1, 2005.

Rule 15. Applications, Filing Dates and Fees for Examination and Re-Examination

Application for admission on first examination must be made on forms prescribed by the State Board of Law Examiners and filed with the Executive Director of the Board. The application shall be in such form and shall request such information as may be required by the Board of Law Examiners. Form applications shall be prepared by the State Board of Law Examiners and furnished to applicants upon request. The Board of Law Examiners may require additional information as is deemed by it to be necessary.

An affidavit of the dean of the applicant's law school, or the dean's designee, to the effect that there is nothing in the school records or personal knowledge of the dean or faculty of such school to indicate that the applicant is not of good moral character or that the applicant is not fit for admission to the practice of law must be filed with the State Board of Law Examiners. The Board shall provide forms for such certification.

A certified transcript of the law school record of the applicant showing the date of graduation and the degree conferred must be filed with the Board of Law Examiners before the applicant can be admitted to the bar.

Filing of applications may be made by personal delivery to the office of the Board of Law Examiners or by regular, certified or registered United States mail. If filing is made by personal delivery, the date of filing is determined by the date of the Received stamp of the Board office. If filing is made by mail, the application shall be deposited in the United States mail with postage prepaid. The United States mail postmark will determine the filing date. Facsimile filing is not permitted. No requests for filing past the stated deadlines or for waiver of filing deadlines will be accepted by the Board of Law Examiners or by the Supreme Court.

Applications for admission on first examination for the July examination must be filed by April 1, and accompanied by a filing fee of two hundred fifty dollars (\$250). A late filing period is permitted until April 15. The filing fee for late filing is five hundred dollars (\$500).

The deadline filing date for the February examination is November 15 of the previous year. The filing fee is two hundred fifty dollars (\$250). The late filing period is from that date to November 30 of the previous year. The late filing fee is five hundred dollars (\$500).

If an applicant fails to pass the first examination and is permitted to take further examinations, the application for re-examination must be made on forms prescribed by the Board and filed with the Executive Director by the following dates. Applications for re-examination for the July examination must be filed by May 30 and accompanied by a filing fee of two hundred fifty dollars (\$250). The late filing deadline is June 15 and the late filing fee is five hundred dollars (\$500). Applications for re-examination for the February examination must be filed by December 15 of the previous year. The regular filing fee is two hundred fifty dollars (\$250). The late filing deadline is December 30 of the previous year. The late filing fee is five hundred dollars (\$500).

There are no other provisions for or consideration of requests for late filing by the Board or by the Indiana Supreme Court.

Applicants who have a petition before the Board or an appeal before the Supreme Court of the grading of their examination will be required to meet all filing deadlines for re-examination. If an applicant is successful on petition or on appeal, the applicant will receive a full refund of any re-examination fee. If an applicant whose application has been approved and processed fails to take the examination first following its approval, such applicant shall have the privilege of having that application held in abeyance and of taking the next regularly scheduled examination given by the Board without payment of any additional fee. Any applicant whose application has been approved and processed who fails to take that examination, or the next following examination, shall have that application dismissed. The applicant will be entitled to a refund of one-half (1/2) of the fee paid.

If an applicant applies to sit for a first examination after his or her application has been dismissed, a new application must be filed and a two hundred fifty dollar (\$250) filing fee must be paid and the first examination deadlines must be met. If an applicant applies to sit for a re-examination after his or her application has been dismissed, a new application must be filed and a two hundred fifty dollar (\$250) filing fee must be paid, but these applicants will be permitted to file by the re-examination time deadline and will have the opportunity to file within that late filing period. All applicants applying after dismissal must meet the regular deadlines or late filing deadlines and pay the regular fee or the late fee as they apply to those deadlines.

Amended Nov. 30, 1989, effective Jan. 1, 1990. Amended Nov. 25, 1997, effective Jan. 1, 1998; Sept. 11, 2000; amended Sep. 30, 2004, effective Jan. 1, 2005.

Rule 16. [Vacated Effective January 1, 1998]

Rule 17. Examinations

Section 1. No person shall be licensed to practice law in this state who has not taken and passed a Bar examination as provided in these rules, except attorneys who are licensed in another jurisdiction and who qualify for admission without examination under the provisions of Admission and Discipline Rule 6.

Section 2. In addition, each applicant for admission upon examination, before being admitted, must pass the Multistate Professional Responsibility Examination (MPRE). The passing score for the MPRE shall be a scaled score of eighty (80) and must be achieved within two (2) years before or after the date the applicant successfully takes the Indiana two-day essay bar examination.

Section 3. An applicant who successfully passes the Bar examination must complete all requirements for, and receive, a law degree and be admitted to the practice of law before the Court within two (2) years of the last date of the applicant's bar examination, or the bar examination must be repeated.

Section 4. The bar examination shall be administered with the identity of the applicant remaining anonymous throughout the examination, grading and review. The Executive Director shall adopt such procedures necessary for the identity of all applicants by number only. It shall be a violation of these Rules for the applicant, or anyone upon the applicant's behalf, to attempt to reveal the identity, origin, gender or race of the applicant at any time throughout the examination and review process.

Section 5. The Executive Director of the Board of Law Examiners shall notify each applicant, promptly after request for application, of the subject matter which the applicants may expect to be covered in the bar examination interrogatories.

Since the bar examination attempts to establish the applicant's ability to practice law in the State of Indiana, questions requiring answers determining an understanding of Indiana law will be expected. From time to time, the Board shall publish a listing of subject matters to be covered on examinations.

Amended effective March 23, 1970; amended effective July 30, 1973; amended Oct. 15, 1986, effective Jan. 1, 1987; amended effective Sept. 3, 1991. Amended Dec. 23, 1996, effective March 1, 1997; amended Dec. 22, 2000, effective Jan. 1, 2001

Rule 18. Report on Examinations

Section 1. Unless otherwise ordered by the Court, there shall be two (2) bar examinations held annually, in February and July. The examination shall be supervised by the Board. The number and form of the questions and the subject matter tested shall be determined by the Board of Law Examiners with the approval of the Supreme Court.

Section 2. The Board of Law Examiners shall act on and report passing or failing to the applicant on all bar examinations within seventy-five (75) days after the final day of the examination, and may inform interested news media of the names of the applicants successfully passing the bar examination.

Section 3. The Board shall certify to the Court the applicants for admission who have passed the bar examination and the Multistate Professional Responsibility Examination (MPRE), and its recommendations for admission based upon the applicant's satisfaction of the provisions and requirements of these Rules.

Amended effective Jan. 1, 1968; amended Oct. 30, 1972, effective Nov. 1, 1972; amended Oct. 15, 1986, effective Jan. 1, 1987. Amended Dec. 23, 1996, effective March 1, 1997. amended Dec. 22, 2000, effective Jan. 1, 2001.

Rule 19. Confidentiality

Section 1. All information and all records obtained and maintained by the Board of Law Examiners in the performance of its duty under these rules and as delegated by the Supreme Court of Indiana shall be confidential, except as otherwise provided by these rules, or by order of (or as otherwise authorized by) the Supreme Court of Indiana.

Section 2. All materials and information in the possession or knowledge of the Board of Law Examiners, its Executive Director, or its agents or employees, shall be the property of the Supreme Court of Indiana, and the Board shall serve as custodian of such materials and information. This shall include, but not be limited to, the applications and files of all the applicants, reports and correspondence regarding investigation of applicants, inter-office and inter-member memoranda, minutes and records of all meetings and hearings, and all examination materials and results.

Section 3. The Board is authorized to disclose information relating to applicants or members of the bar only as follows:

- (a) The names of applicants successfully passing the law examination.
- (b) The name of any applicant admitted to the practice of law at any admission ceremony.
- (c) The name, date of birth, Social Security number and date of application, for placement in a national data bank operated by or on behalf of the National Conference of Bar Examiners.
- (d) Upon request of any law school, the names of each of its graduating students that took the law examination and whether each passed or failed the exam.
- (e) Information requests by the National Conference of Bar Examiners or from a foreign bar admitting agency, when accompanied by a written authorization and release duly executed by the person about whom such information is sought, providing, however, that no information received by the Board under an agreement of confidentiality or designation of confidentiality or otherwise restricted by law or these rules shall be disclosed.
- (f) Information relating to a violation of the Indiana Rules of Professional Conduct or to the unauthorized practice of law may be supplied to the Indiana Disciplinary Commission either at the request of the Disciplinary Commission or on the Board's own motion, except that information received by the Board under an agreement of confidentiality or otherwise restricted by law shall not be disclosed.
- (g) Copies of documents previously filed by an applicant may be provided upon the applicant's written request. Copies of documents submitted by other parties regarding an applicant may be supplied to the applicant only upon written consent by the party submitting such documents. The complete record of any hearing, including any and all documents or exhibits formally introduced into the record, and any transcript of such hearings may be made available to the applicant who was a party to the hearing pursuant to other provisions of these rules.

Adopted Dec. 23, 1996, effective March 1, 1997; amended Dec. 22, 2000, effective Jan. 1, 2001

Rule 20. Immunity

Section 1. Persons Providing Information to the State Board of Law Examiners. Every person or entity shall be immune from civil liability for providing, in good faith, documents, statements of opinion, records, or other information regarding an applicant or potential applicant for admission to the bar of this State to the State Board of Law Examiners; to its officers, Executive Director, staff, employees or agents; or to the Committees on Character and Fitness and their members and agents.

Section 2. Immunity for Board, Staff and Character and Fitness Committee. The State Board of Law Examiners and its officers, members, Executive Director, staff, employees and agents, and the Committees on Character and Fitness and their members and agents, are immune from all civil liability for acts

performed in the course of their official duties relating to the examination, character and fitness qualification, and licensing of persons seeking to be admitted to the practice of law.

Rule 21. Admissions

An applicant who is eligible for admission under the foregoing rules may be admitted by appearing in person before the bar of this Court and by taking the oath hereinafter set forth after establishing to the satisfaction of the Court that the applicant is a person of good moral character and fitness.

Amended effective Oct. 27, 1971; amended effective Dec. 18, 1973; amended Dec. 30, 1976, effective Jan. 1, 1977; amended Dec. 14, 1977, effective Jan. 1, 1978; amended April 14, 1988, effective Jan. 1, 1989; amended Nov. 30, 1989, effective Jan. 1, 1990.

Rule 22. Oath of Attorneys

Upon being admitted to practice law in the state of Indiana, each applicant shall take and subscribe to the following oath or affirmation:

"I do solemnly swear or affirm that: I will support the Constitution of the United States and the Constitution of the State of Indiana; I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any action, proceeding, or defense which shall appear to me to be unjust, but this obligation shall not prevent me from defending a person charged with crime in any case; I will employ for the purpose of maintaining the causes confided to me, such means only as are consistent with truth, and never seek to mislead the court or jury by any artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my client at every peril to myself; I will abstain from offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will not encourage either the commencement or the continuance of any action or proceeding from any motive of passion or interest; I will never reject, from any consideration personal to myself, the cause of the defenseless, the oppressed or those who cannot afford adequate legal assistance; so help me God."

Amended effective Feb. 15, 1954; amended effective June 19, 1985; amended Sep. 30, 2004, effective Jan. 1, 2005.

Rule 23. Disciplinary Commission and Proceedings

Section 1. General Principles. Each person granted the privilege to practice law in this State has the obligation to behave at all times in a manner consistent with the trust and confidence reposed in him or her by this Court and in a manner consistent with the duties and responsibilities as an officer or judge of the courts of this State. The Supreme Court has exclusive jurisdiction of all cases in which an attorney who is admitted to the bar of this Court or who practices law in this State (hereinafter referred to as "attorney") is charged with misconduct. The procedures hereinafter set forth shall be employed and construed to protect the public, the court and the members of the bar of this State from misconduct on the part of attorneys and to protect attorneys from unwarranted claims of misconduct.

The term "attorney" as used in this rule shall include, in addition to all persons admitted to the bar of this Court, or who practice law in this State, any and all judges of any and all courts of this State now in existence or hereafter created or established.

Section 2. Grounds for Discipline or Suspension.

- (a) Any conduct that violates the Rules of Professional Conduct or the Code of Judicial Conduct heretofore adopted or as hereafter amended by this Court or any standards or rules of legal and judicial ethics or professional responsibility then in effect or hereafter adopted by this Court shall constitute grounds for discipline.
- (b) If an attorney admitted to practice in this State who is also admitted to practice in any other state should be disbarred or suspended by the proper authority of such other state, such disbarment or

suspension shall constitute sufficient grounds for disbarment or suspension of said attorney in this State.

- (c) Any attorney who becomes disabled by reason of physical or mental illness or infirmity or because of the use of or addiction to intoxicants or drugs shall be subject to suspension by reason of such disability.

Section 3. Types of Discipline and Suspension.

- (a) One of the following types of discipline may be imposed upon any attorney found guilty of misconduct: permanent disbarment from the practice of law; suspension for a definite or an indefinite period from the practice of law subject to reinstatement as hereinafter provided; suspension for a definite period, not to exceed six (6) months, from the practice of law with provision for automatic reinstatement upon such conditions as the Court shall specify in the order of suspension; a public reprimand; a private reprimand; or a private administrative admonition.
- (b) Any attorney found disabled by reason of physical or mental illness or infirmity or by use of or addiction to any intoxicants or drugs shall be suspended for the duration of such disability.
- (c) In cases of misconduct or disability, this Court may, in lieu of permanent disbarment or suspension, place an attorney on probation and permit such attorney to continue practicing law if in its opinion such action is appropriate and desirable. In such event, the attorney will be subject to such conditions, limitations and restrictions as this Court may see fit to impose, and upon a violation of such conditions, restrictions or limitations, said attorney may be suspended or disbarred.
- (d) Notice of permanent disbarment, suspension or public reprimand shall be communicated to the parties to the proceeding, the Clerk of this Court, the Clerk of the United States Court of Appeals for the Seventh Circuit, the Clerk of each of the Federal District Courts in this State, the Clerk of the United States Bankruptcy Courts in this State, the Clerk of the Court and Bar Association of each county in which the attorney maintains an office, the Clerk of the Court and Bar Association of each contiguous county, a newspaper of general circulation in each county in which the attorney maintains an office, the official publication of the Indiana State Bar Association, and the American Bar Association. Notice of private reprimand shall be communicated to the parties to the proceeding and the Clerk of this Court. In cases where probation is imposed by this Court, the Clerk shall notify such persons as the Court may direct of the action taken and of the restriction, conditions or limitations.

Section 4. Reinstatement.

- (a) A person who has been suspended from the practice of law may petition for reinstatement when the term of suspension prescribed in the order of suspension has elapsed. A person who has resigned as a member of the bar may petition for reinstatement when five (5) years have elapsed since the date of the order accepting the resignation. If costs have been imposed as part of an order of suspension or an order accepting an affidavit of resignation, those costs must be paid before a petition for reinstatement is filed.
- (b) A petition for reinstatement may be granted if the petitioner establishes by clear and convincing evidence before the disciplinary commission of this Court that:
 - (1) The petitioner desires in good faith to obtain restoration of his privilege to practice law;
 - (2) The petitioner has not practiced law in this State or attempted to do so since he or she was disciplined;
 - (3) The petitioner has complied fully with the terms of the order for discipline;
 - (4) The petitioner's attitude towards the misconduct for which he or she was disciplined is one of genuine remorse;
 - (5) The petitioner's conduct since the discipline was imposed has been exemplary and above reproach;
 - (6) The petitioner has a proper understanding of and attitude towards the standards that are imposed upon members of the bar and will conduct himself or herself in conformity with such standards;
 - (7) The petitioner can safely be recommended to the legal profession, the courts and the public as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence, and in general to aid in the administration of justice as a member of the bar and an officer of the Courts;
 - (8) The disability has been removed, if the discipline was imposed by reason of physical or mental illness or infirmity, or for use of or addiction to intoxicants or drugs;

- (9) The petitioner has taken the Multistate Professional Responsibility Examination (MPRE) within six (6) months before or after the date the petition for reinstatement is filed and passed with a scaled score of eighty (80).
- (c) Whenever a person is suspended for a definite period not to exceed six (6) months with provision for automatic reinstatement, the commission shall have the right to file written objections to such automatic reinstatement, setting forth its reasons for such objections, which shall be limited to:
 - (1) failure to comply with the terms of the order;
 - (2) pendency of other complaints;
 - (3) failure to comply with the terms of Section 26, *infra*; and
 - (4) failure to satisfy fully the costs of the proceeding assessed pursuant to Section 16.

Such objections must be filed with the Court at least ten (10) days prior to the expiration of such period of suspension, and a copy of such objections shall be mailed to the suspended attorney. The Court shall conduct a hearing on such objections and upon the question of reinstatement of such attorney, except that the Court need not conduct a hearing when the reason for the objections is the respondent's failure to satisfy fully the costs of the proceeding assessed pursuant to Section 16. After such hearing, the Court shall determine whether or not such suspended attorney shall be reinstated. If the Court determines that such attorney should not then be reinstated, the Court shall, in its order, specify when such attorney shall be eligible to apply for reinstatement pursuant to subsection (a) of this section.

If the Court determines that the respondent has failed to satisfy fully the costs assessed against him or her, the Court may enter an order staying the automatic reinstatement until the suspended attorney satisfies fully the costs of the proceeding assessed against such attorney or until further order of the Court.

Section 5. Role of Bar Association.

- (a) Bar associations in this State shall not conduct proceedings for the imposition of discipline as defined in this rule. Such bar associations shall take all necessary action to resolve attorney-client disputes which do not involve claims of misconduct upon request by the Disciplinary Commission. Such bar associations and the members of the bar shall also assist the Disciplinary Commission in the investigation of claims of misconduct upon request by the Disciplinary Commission.
- (b) Bar associations of this State may take reasonable action to resolve attorney-client disputes where the dispute is limited to the amount of compensation being charged by the attorney independently of any request by the Disciplinary Commission and without referring such dispute to the Disciplinary Commission. Such action by the bar associations may include but shall not be limited to mediation or arbitration of the amounts to be charged for an attorney's services.

In cases where a bar association attempts to resolve an attorney-client dispute as to compensation charged for the attorney's services, any person dissatisfied with such attempt at resolution shall have a right to file a formal complaint with the Disciplinary Commission if the amount charged by the attorney is so completely excessive in relation to the services performed and to the usual considerations taken into account in determining an attorney's charges as to constitute misconduct in itself, or if other misconduct on the part of the attorney is claimed.

- (c) A bar association of this State shall be permitted to prepare and file a claim of misconduct with the Disciplinary Commission under the following circumstances:
 - (1) The decision to prepare and file such claim of misconduct shall be taken at a regular or special meeting of said bar association after notice has been given to the members of such association
or
Where such association has a governing Board of Managers or Board of Directors, such decision may be taken at a regular or special meeting of such Board of Managers or Board of Directors after notice to such managers or directors.
 - (2) A quorum of the members of such association, or of the Board of Managers or Board of Directors thereof shall be in attendance at the meeting.

- (3) The decision to file a claim of misconduct shall be made by a roll call vote of the members, managers or directors in attendance at such meeting, with the vote of each member present being recorded.

Section 6. Composition of Supreme Court Disciplinary Commission.

- (a) A Disciplinary Commission to be known as the "Disciplinary Commission of the Supreme Court of Indiana" (hereinafter referred to as "the commission") is hereby created and shall have the powers and duties hereinafter set forth.
- (b) The Disciplinary Commission shall consist of nine (9) members appointed by the Supreme Court of Indiana, seven (7) of whom shall be admitted to the Bar of the Supreme Court and two (2) of whom shall be lay persons. Those who are not members of the Bar must take and subscribe to an oath of office which shall be filed and maintained by the Clerk of this Court. A reasonable effort shall be made to provide a geographical representation of the State. The term of each member shall be for five (5) years. Provided, however, upon the effective date of this rule, two (2) members shall be appointed for a term of two (2) years, two (2) members for a term of three (3) years, two (2) members for a term of four (4) years and one (1) member for a term of five (5) years. The initial term of the two additional members authorized by the amendment of this subsection effective February 1, 1996, shall be for two (2) and four (4) years, respectively. Thereafter, the terms of each appointee shall be for five (5) years, or in the case of an appointee to fill the vacancy of an unexpired term, until the end of such unexpired term. Any member may be terminated by the Court for a good cause.

Commission members who are not admitted to the Bar shall not be eligible for appointment as hearing officers under Section 18(b) of this rule.

Section 7. Organization of the Disciplinary Commission.

- (a) The Commission shall annually elect from among its membership a Chairman who shall preside at all meetings, a Vice Chairman who shall preside in the absence of the Chairman, and a Secretary who shall keep the minutes of the meetings of the Commission.
- (b) Five (5) Commissioners shall constitute a quorum of the Commission and the Commission shall act by a vote of a majority of Commissioners present.
- (c) The Commission shall meet monthly at a time and place designated by the Chairman who may also convene special meetings of the Commission in his or her discretion. The members of the Commission shall be allowed their necessary expenses and such reasonable compensation as the Supreme Court shall fix from time to time.

Section 8. Powers and Duties of the Disciplinary Commission.

In addition to the powers and duties set forth in this Rule, the Commission shall have the power and duty to:

- (a) appoint with the approval of the Supreme Court an Executive Secretary of the Commission who shall be a member of the Bar of this State and who shall serve at the pleasure of the Commission;
- (b) prepare and furnish a form of request for investigation to each person who claims that an attorney is guilty of misconduct and to each Bar Association in this State for distribution to such persons;
- (c) supervise the investigation of claims of misconduct;
- (d) issue subpoenas, including subpoenas duces tecum; the failure to obey such subpoena may be punished as contempt of this Court, or in the case of an attorney under investigation, shall subject the attorney to suspension under the procedures set forth in subsection 10(f) of this Rule;
- (e) do all things necessary and proper to carry out its powers and duties under these Rules;
- (f) the right to bring an action in the Supreme Court to enjoin or restrain the unauthorized practice of law.

Section 9. Powers and Duties of the Executive Secretary.

In addition to the powers and duties set forth in this Rule, the Executive Secretary shall have the power and duty to:

- (a) administer the Commission's work;

- (b) appoint, with the approval of the Commission, such staff as may be necessary to assist the Commission to carry out its powers and duties under this Rule;
- (c) supervise and direct the work of the Commission's staff;
- (d) appoint and assign duties to investigators;
- (e) supervise the maintenance of the Commission's records;
- (f) issue subpoenas in the name of the Commission, including subpoenas duces tecum. The failure to obey such a subpoena shall be punished as a contempt of this Court or, in the case of an attorney under investigation, shall subject the attorney to suspension under the procedures set forth in subsection 10(f) of this Rules;
- (g) enforce the collection of the registration fee provided in Section 15 against delinquent members of the Bar;
- (h) notwithstanding Section 22, cooperate with the attorney disciplinary enforcement agencies of other jurisdictions, including, upon written request, the release of any documents or records that are in the control of the Executive Secretary to the chief executive of an attorney disciplinary enforcement agency in any jurisdiction in which an Indiana attorney is also admitted; and
- (i) do all things necessary and proper to carry out the Executive Secretary's duties and powers under this Rule.

Section 10. Investigatory Procedures.

- (a) Upon receipt of a written, verified claim of misconduct (hereinafter referred to as "the grievance"), from a member of the public, a member of this bar, a member of the Commission, or a Bar Association (hereinafter referred to as "the grievant") and completion of such preliminary investigation as may be deemed appropriate, the Executive Secretary shall:
 - (1) Dismiss the claim, with the approval of the Commission, if the Executive Secretary determines that it raises no substantial question of misconduct; or
 - (2) If the Executive Secretary determines that it does raise a substantial question of misconduct, send a copy of the grievance by certified mail to the attorney against whom the grievance is filed (hereinafter referred to as "the respondent") and shall demand a written response. The respondent shall respond within twenty (20) days, or within such additional time as the Executive Secretary may allow, after the respondent receives a copy of the grievance. In the event of a dismissal as provided herein, the person filing the grievance and the respondent shall be given written notice of the Executive Secretary's determination. In the event of a determination that a substantial question exists, the matter shall proceed to (b) hereinafter.
- (b) Thereafter, if the Executive Secretary, upon consideration of the grievance, any response from the respondent, and any preliminary investigation, determines there is a reasonable cause to believe that the respondent is guilty of misconduct the grievance shall be docketed and investigated. If the Executive Secretary determines that no such reasonable cause exists, the grievance shall be dismissed with the approval of the Commission. In either event, the person filing the grievance (hereinafter referred to as "the grievant") and the respondent shall be given written notice of the Executive Secretary's determination.
- (c) If the grievance is docketed for investigation, the Executive Secretary shall conduct an investigation of the grievance. Upon completion of the investigation the Executive Secretary shall promptly make a report of the investigation and a recommendation to the Commission at its next meeting.
- (d) In conducting an investigation of any grievance, or in considering the same, the Executive Secretary or the Commission shall not be limited to an investigation or consideration of only matters set forth in the grievance, but shall be permitted to inquire into the professional conduct of the attorney generally. In the event that the Executive Secretary or the Commission should consider any charges of misconduct against an attorney not contained in the grievance, the Executive Secretary shall notify the attorney of the additional charges under consideration, and the attorney shall make a written response to the additional charges under consideration within twenty (20) days after the receipt of such notification, or within such additional time as the Executive Secretary shall allow.

Any additional charges of misconduct against an attorney, after such notice has been given by the Executive Secretary and the attorney has had an opportunity to reply thereto, may be the subject of a count of any complaint filed against the attorney pursuant to Sections 11 and 12 of this rule.

- (e) It shall be the duty of every attorney against whom a grievance is filed under this Section to cooperate with the Commission's investigation, accept service, comply with the provisions of these rules, and when notice is given by registered or certified mail, claim the same in a timely manner either personally or through an authorized agent. Every attorney is obligated under the terms of Admission and Discipline Rule 2 to notify the Clerk of the Supreme Court of any change of address or name within thirty (30) days of such change, and a failure to file the same shall be a waiver of notice involving licenses as attorneys or disciplinary matters.
- (f) An attorney who is the subject of an investigation by the Disciplinary Commission may be suspended from the practice of law upon a finding that the attorney has failed to cooperate with the investigation.
 - (1) Such a finding may be based upon the attorney's failure to submit a written response to pending allegations of professional misconduct, to accept certified mail from the Disciplinary Commission that is sent to the attorney's official address of record with the Clerk and that requires a written response under this Rule, or to comply with any lawful demand for information made by the Commission or its Executive Secretary in connection with any investigation, including failure to comply with a subpoena issued pursuant to sections 8(d) and 9(f) or unexcused failure to appear at any hearing on the matter under investigation.
 - (2) Upon the filing with this Court of a petition authorized by the Commission, the Court shall issue an order directing the attorney to respond within ten (10) days of service of the order and show cause why the attorney should not be immediately suspended for failure to cooperate with the disciplinary process. Service upon the attorney shall be made pursuant to sections 12(g) and (h). The suspension shall be ordered upon this Court's finding that the attorney has failed to cooperate, as outlined in subsection (f)(1), above. An attorney suspended from practice under this subsection shall comply with the requirements of sections 26(b) and (c) of this rule.
 - (3) Such suspension shall continue until such time as (a) the Executive Secretary certifies to the Court that the attorney has cooperated with the investigation; (b) the investigation or any related disciplinary proceeding that may arise from the investigation is disposed of; or (c) until further order of the Court.
 - (4) On motion by the Commission and order of the Court, suspension that lasts for more than six (6) months may be converted into indefinite suspension.
 - (5) Upon the disposition of any show cause petition filed pursuant to subsection (f)(2), above, resulting in either dismissal due to the respondent's subsequent cooperation or suspension from the practice of law, the Commission may seek an order reimbursing the Commission in the amount of \$500 plus out-of-pocket expenses for its time and effort in seeking the order in addition to all other costs and expenses provided for by Section 17 of this rule. An attorney who fails to pay the reimbursement, costs, or expenses assessed pursuant to this section shall be subject to the provisions of Section 21(j) of this Rule.

Section 11. Pre-hearing Procedures.

- (a) The members of the Commission shall consider and make a determination of the report and recommendations of the Executive Secretary not later than the meeting following the submission of the report. If the Commission determines that there is not reasonable cause to believe that the respondent is guilty of misconduct the grievance shall be dismissed, and the grievant and the respondent shall be given written notice of the Commission's determination.
- (b) If after such consideration, the Commission determines there is a reasonable cause to believe the respondent is guilty of misconduct which would warrant disciplinary action, it shall file with the Clerk a complaint as provided in Section 12. Upon the filing of a complaint, the Supreme Court shall appoint a hearing officer or officers, not to exceed three (3) in number, who shall be members of the Bar of this Court, none of whom shall be members of the Disciplinary Commission, to hear and determine said charges.
- (c) After the filing of a complaint with the Clerk, the parties (commission and respondent) may conditionally agree upon the discipline to be imposed, in which event they shall jointly submit to the

Division of State Court Administration a statement of circumstances which shall contain the charges, the facts agreed to, the facts in dispute, the evidence the parties separately believe would be adduced in a hearing, the charge(s) which the parties agree are established, and the discipline with which the parties are in conditional agreement. Said statement shall also contain an affidavit executed by the respondent stating that the respondent consents to the agreed discipline and that:

- (1) The respondent's consent is freely and voluntarily rendered; the respondent is not being subjected to coercion or duress; the respondent is fully aware of the implications of submitting his or her consent;
- (2) The respondent is aware that there is a presently pending proceeding involving allegations that there exist grounds for his or her discipline the nature of which shall be specifically set forth;
- (3) The respondent acknowledges that the material facts set forth in the conditional agreement are true; and
- (4) The respondent submits his or her agreement because the respondent knows that if charges were predicated upon matters under investigation, or if the proceeding were prosecuted, the respondent could not successfully defend himself or herself.

Said statement may also contain any other information that the parties deem relevant, other than statements by witnesses attesting to the character or reputation of the respondent, which statements may not be filed.

Upon such submission, the Court will consider the same and (1) enter an order for the discipline conditionally agreed to or (2) submit to the parties a proposed disposition for such discipline as the Court shall deem appropriate, or (3) notify the parties that it declines to approve the agreement or recommend a disposition.

In the event an order is entered as set forth under (1) above, such order shall be a final disposition of the matter. In the event the Court submits a proposed disposition as set forth under (2) above, and the parties shall desire to agree to such disposition, they shall, within sixty (60) days following the submission of such proposed disposition, file with the Clerk a statement of agreement, verified by the respondent and by a member of the Commission or the Executive Secretary thereof. Said statement of agreement shall reflect the prior conditional agreement, the prior action of the Court thereon and the agreement of the parties thereto. Upon such filing, the Court shall enter its disposition accordingly, which shall conclude the matter. In the event the parties do not desire to agree to such proposed disposition or in the event the Court proceeds as set forth under (3) above, the parties shall proceed as if no conditional agreement had been filed.

It is the intent of this rule to encourage appropriate agreed dispositions of disciplinary matters. A conditional agreement shall not be admitted into evidence at any hearing of the matter.

Section 11.1 Summary Suspensions.

- (a) Upon finding that an attorney has been found guilty of a crime punishable as a felony, the Supreme Court may suspend such attorney from the practice of law pending further order of the Court or final determination of any resulting disciplinary proceeding.
 - (1) The judge of any court in this state in which an attorney is found guilty of a crime shall, within ten (10) days after the finding of guilt, transmit a certified copy of the proof of the finding of guilt to the Executive Secretary of the Indiana Supreme Court Disciplinary Commission.
 - (2) An attorney licensed to practice law in the state of Indiana who is found guilty of a crime in any state or of a crime under the laws of the United States shall, within ten (10) days after such finding of guilt, transmit a certified copy of the finding of guilt to the Executive Secretary of the Indiana Supreme Court Disciplinary Commission.
 - (3) Upon receipt of information indicating that an attorney has been found guilty of a crime punishable as a felony under the laws of any state or of the United States, the Executive Secretary shall verify the information, and, in addition to any other proceeding initiated pursuant to this Rule, shall file with the Supreme Court a Notice of Finding of Guilt and Request for Suspension, and shall forward notice to the attorney by certified mail. The attorney shall have fifteen (15) days

thereafter to file any response to the request for suspension. Thereafter, the Supreme Court may issue an order of suspension upon notice of finding of guilt which order shall be effective until further order of the Court.

- (b) If it appears to the Disciplinary Commission upon the affirmative vote of two-thirds (2/3) of its membership, that : (i) the continuation of the practice of law by an attorney during the pendency of a disciplinary investigation or proceeding may pose a substantial threat of harm to the public, clients, potential clients, or the administration of justice, and (ii) the alleged conduct, if true, would subject the respondent to sanctions under this Rule, the Executive Secretary shall petition the Supreme Court for an order of interim suspension from the practice of law or imposition of temporary conditions of probation on the attorney
- (1) A petition to the Supreme Court for interim relief under this subsection shall set forth the specific acts and violations of the Rules of Professional Conduct submitted by the Commission as grounds for the relief requested. The petition shall be verified and may be supported by documents or affidavits. A copy of the petition, along with a notice to answer, shall be served by the Commission on the attorney in the same manner as provided in sections 12(g) and (h) of this rule. The Executive Secretary shall file a return on service, setting forth the method of service and the date on which the respondent was served with the petition and notice to answer. The attorney shall file an answer to the Commission's petition with the Supreme Court within fourteen (14) days of service. The answer shall be verified and may be supported by documents or affidavits. The attorney shall mail a copy of the answer to the Executive Secretary and file proof mailing with the court.
 - (2) The failure of the respondent to answer the Commission's petition within the time granted by this rule for an answer shall constitute a waiver of the attorney's right to contest the petition, and the Supreme Court may enter an order of interim suspension or imposition of temporary conditions of probation in conformity with subsection (b)(5) either upon the record before it, or at the discretion of the Court, after a hearing ordered by the Court.
 - (3) Upon the filing of the respondent's answer and upon consideration of all of the pleadings, the court may:
 - (i) Order interim suspension or imposition of temporary conditions of probation upon the petition and answer in conformity with subsection (b)(5);
 - (ii) Deny the petition upon the petition and answer; or
 - (iii) Refer the matter of a hearing officer, who shall proceed consistent with the procedures set forth in subsection (b)(4).
 - (4) Upon referral to a hearing officer of an interim relief matter from the Supreme Court, the hearing officer shall hold a hearing thereon within thirty (30) days of the date of referral and render a report to the Court containing findings of fact and a recommendation within fourteen (14) days of the hearing. The Court shall thereafter act promptly on the hearing officer's report, findings and recommendation.
 - (5) The Supreme Court, upon the record before it or after receiving a hearing officer's report, shall enter an appropriate order. If the Court finds that the Commission has shown by a preponderance of the evidence that:
 - (i) The continuation of the practice of law by the respondent during the pendency of a disciplinary investigation or proceeding may pose a substantial threat of harm to the public, clients, potential clients, or the administration of justice and
 - (ii) The conduct would subject the respondent to sanctions under this rule; the Court shall grant the petition and enter an order of interim suspension or imposition of temporary conditions of probation. The order shall set forth an effective date and remain in effect until disposition of any related disciplinary proceeding or further order of the court.
 - (6) In the event the Court issues an order of interim relief pursuant to subsection (b)(5), the Respondent may file a verified motion with the Supreme Court at any time for dissolution or amendment of the interim order by verified motion that sets forth specific facts demonstrating good cause. A copy of the motion shall be served on the Executive Secretary. Successive motions for dissolution or amendment of an interim order may be summarily dismissed by the Supreme Court to the extent they raise issues that were or with due diligence could have been raised in a

- prior motion. If the motion is in proper form, the Court may refer the matter to a hearing officer, who shall proceed consistent with the procedures set forth in subsection (b)(4).
- (7) In the event a verified complaint for disciplinary action has not been filed by the time an order of interim relief is entered, the Disciplinary Commission shall file a formal complaint within sixty (60) days of the interim relief order. When a respondent is subject to an order of interim relief, the hearing officer shall conduct a final hearing of the underlying issues and report thereon to the Court without undue delay.
 - (8) An attorney suspended from practice under this section shall comply with the requirements of subsections 26(b) and (c) of this rule.
 - (c) Upon receipt of an order from a court pursuant to IC 31-16-12-8 or IC 31-14-12-5 stating that an attorney has been found to be delinquent in the payment of child support as a result of an intentional violation of an order for support, the Executive Secretary shall file with the Supreme Court a Notice of Intentional Violation of Support Order and Request for Suspension, and shall forward notice to the attorney by certified mail. The attorney shall have fifteen (15) days thereafter to file any response to the request for suspension. Thereafter, the Supreme Court may issue an order of suspension. Such order shall be effective until further order of the Court.

Section 11.2 Filing and Service of Pleading and Other Papers

- (a) Filing.
 - (1) Except as otherwise provided in subsection (2) hereof, all pleadings and papers subsequent to the complaint which are required to be served upon a party shall be filed with the Clerk of the Supreme Court.
 - (2) No deposition or request for discovery or response thereto shall be filed with the Court unless under circumstances set forth in Trial Rule 5(D)(2).
 - (3) Original depositions shall be maintained according to the procedures set forth in Trial Rule 5(D)(3).
 - (4) In the event it is made to appear to the satisfaction of the hearing officer that the original of a deposition or request for discovery or response thereto cannot be filed with the Court when required, the Court may allow use of a copy instead of the original.
 - (5) The filing of any deposition shall constitute publication.
- (b) *Filing With the Court Defined.* All papers will be deemed filed with the Clerk when they are:
 - (1) personally delivered to the Clerk;
 - (2) deposited in the United States Mail, postage prepaid, properly addressed to the Clerk; or
 - (3) deposited with any third-party commercial carrier for delivery to the clerk within three (3) calendar days, cost prepaid, properly addressed.
- (c) *Filing; Number of Copies.* Except as otherwise provided in this rule, the following shall be filed:
 - (1) An original and one (1) copy of any pleading, motion or other paper directed to the attention of the hearing officer that is filed between the date the Court appoints the hearing officer and the date the hearing officer files written finding of fact.
 - (2) An original and five (5) copies of all other documents filed with the Clerk.
- (d) *Required Service.* All documents tendered to the Clerk for filing must be served upon all parties or their counsel and the hearing officer, after one has been appointed.
- (e) *Time for Service.* A party shall serve a document no later than the date the document is filed.
- (f) *Manner and Date of Service.* Unless otherwise provided in this rule, all papers will be deemed served when they are:
 - (1) personally delivered;
 - (2) deposited in the United States Mail, postage prepaid, properly addressed; or
 - (3) deposited with any third-party commercial carrier for delivery within three(3) calendar days, cost prepaid, properly addressed.

- (g) *Certificate of Service.* An attorney or unrepresented party tendering a document to the Clerk for filing shall certify that service has been made, list the parties or other served, and specify the date and means of service. The certificate of service shall be placed at the end of the documents and shall not be separately filed. The separate filing of a certificate of service, however, shall not be grounds for rejecting a document for filing. The Clerk may permit documents to be filed without a certificate of service but shall require prompt filing of a separate certificate of service.
- (h) *Time Calculation.* If service is made by mail, an additional three (3) days shall be allowed for service of any responsive document.

Section 12. Prosecution of Grievances

- (a) If the Commission determines that there is reasonable cause to believe respondent is guilty of misconduct and the misconduct would not likely result in a sanction greater than a public reprimand if successfully prosecuted, and if the respondent and the Commission agree to an administrative resolution of the complaint, the Commission may resolve and dispose of minor misconduct by private administrative admonition without filing a verified complaint with the Court. Without limitation, misconduct shall not be regarded as minor if any of the following conditions exist:
 - (1) The misconduct involves misappropriation of funds or property;
 - (2) The misconduct resulted in or is likely to result in material prejudice (loss of money, legal rights or valuable property rights) to a client or other person;
 - (3) The respondent has been publicly disciplined in the past three (3) years;
 - (4) The misconduct involved is of the same nature as misconduct for which the respondent has been publicly or privately disciplined in the past five (5) years;
 - (5) The misconduct includes dishonesty, misrepresentation, deceit, or fraud on the part of the respondent; or
 - (6) The misconduct constitutes the Commission of a felony under applicable law.
- (b) An administrative admonition shall be issued in the form of a letter from the Executive Secretary to the respondent summarizing the facts and setting out the applicable violations of the Rules of Professional Conduct. A copy of the admonition letter shall first be sent to each Justice of the Supreme Court and to the Division of State Court Administration. The administrative admonition shall be final within thirty (30) days thereafter, unless set aside by the Court. If not set aside by the Court, the admonition shall be sent to the respondent, and notice of the fact that a respondent has received a private administrative admonition shall be given by the Executive Secretary to the grievant. The fact that an attorney has received a private administrative admonition shall be a public record, which shall be filed with the Clerk of this Court and shall be kept by the Executive Secretary.
- (c) In the event the Commission determines that the misconduct, if proven, would warrant disciplinary action and should not be disposed of by way of an administrative admonition, the Executive Secretary shall prepare a verified complaint which sets forth the misconduct with which the respondent is charged and shall prosecute the case.
- (d) The complaint shall be entitled "In the Matter of," naming the respondent. Six (6) copies shall be filed with this Court. The complaint may be verified on the basis of information and belief.
- (e) Contemporaneously with the filing of the complaint, the Commission shall promptly prepare and furnish to the clerk as many copies of the complaint and summons as are necessary. The clerk shall examine, date, sign and affix his/her seal to the summons and thereupon issue and deliver the papers to the appropriate person for service. Separate or additional summons shall be issued by the clerk at any time upon proper request by the Commission.
- (f) The summons shall contain:
 - (1) The name and address of the person on whom the service is to be effected;
 - (2) The Supreme Court cause number assigned to the case;
 - (3) The title of the case as shown by the complaint;
 - (4) The name, address, and telephone number of the Disciplinary Commission;

(5) The time within which this rule requires the person being served to respond, and a clear statement that in case of his or her failure to do so, the allegations in the complaint shall be taken as true.

The summons may also contain any additional information that will facilitate proper service.

- (g) Upon the filing of such complaint, the summons and complaint shall be served upon the respondent by delivering a copy of them to the respondent personally or by sending a copy of them by registered or certified mail with return receipt requested and returned showing the receipt of the letter.

In the event the personal service or service by registered or certified mail cannot be obtained upon any respondent attorney, said summons and complaint shall be served on the Clerk of this Court as set forth below.

- (h) Each attorney admitted to practice law in this State shall be deemed to have appointed the Clerk of this Court as his or her agent to receive service of any and all papers, processes or notices which may be called for by any provision of this rule. Such papers, process or notice may be served by filing the same with the Clerk of this Court as the agent for said attorney, together with an affidavit setting forth the facts necessitating this method of service. Upon receipt of such papers, process or notice together with such affidavit, the Clerk of this Court shall immediately mail such papers, process or notice to such attorney at the attorney's address as shown upon the records of the Clerk of this Court, and the Clerk shall make an affidavit showing the mailing of such papers, process or notice to said attorney. Upon the completion of this procedure, said attorney shall be deemed to have been served with such papers, process or notice.

Section 13. Hearing Officers.

In addition to the powers and duties set forth in the rule, hearing officers shall have the power and duty to:

- (a) Conduct a hearing on a complaint of misconduct within sixty (60) days after the hearing officer is appointed and has qualified;
- (b) Administer oaths to witnesses;
- (c) Receive evidence and make written findings of fact and recommendations to the Court; and
- (d) Do all things necessary and proper to carry out their responsibilities under this rule.

Section 14. Proceedings Before the Hearing Officer.

- (a) The rules of pleading and practice in civil cases shall not apply. No motion to dismiss or dilatory motions shall be entertained. The case shall be heard on the complaint and an answer which shall be filed by the respondent within thirty (30) days after service of the summons and complaint, or such additional time as may be allowed upon written application to the hearing officer that sets forth good cause. A written application for enlargement of time to answer shall be automatically allowed for an additional thirty (30) days from the original due date without a written order of the Hearing Officer. Any motion for automatic enlargement of time filed pursuant to this rule shall state the date when such answer is due and the date to which time is enlarged. The motion must be filed on or before the original due date or this provision shall be inapplicable. All subsequent motions shall be so designated and shall be granted by the hearing officer only for good cause shown. An answer shall assert any legal defense. Six (6) copies of such answer shall be filed with the Court. A respondent may on a showing of good cause petition for a change of hearing officer within ten (10) days after the appointment of such hearing officer.
- (b) The answer shall admit or controvert the averments set forth in the complaint by specifically denying designated averments or paragraphs or generally denying all averments except such designated averments or paragraphs as the respondent expressly admits. If the respondent lacks knowledge or information sufficient to form a belief as to the truth of an averment, he or she shall so state and his statement shall be considered a denial. If in good faith the respondent intends to deny only a part of an averment, he or she shall specify so much of it as is true and material and deny the remainder. All denials shall fairly meet the substance of the averments denied. Averments in a complaint are admitted when not denied in the answer. The answer may assert any legal defense. Six (6) copies of such answer shall be filed with the Court. A respondent may on a showing of good cause petition for a change of hearing officer within (10) days after the appointment of such hearing officer.

- (c) When a respondent has failed to answer a complaint as required by this section and that fact is made to appear by affidavit and an application for judgment on the complaint, the allegations set forth in the complaint shall be taken as true. If a respondent who has failed to answer has appeared in the action, he or she (or, if appearing by counsel, his or her counsel) shall be served with written notice of the application for judgment on the complaint at least seven (7) days prior to the hearing on such application. Upon application for judgment on the complaint and in the absence of any answer by the respondent, the hearing officer shall take the facts alleged in the complaint as true and promptly tender a report to the Supreme Court in conformity with subsection (h). If a hearing officer has not been appointed by the time an application for judgment on the complaint is filed and no appearance has been filed by or on behalf of the respondent, the Supreme Court shall act directly on the application for judgment on the complaint.
- (d) Discovery shall be available to the parties on terms and conditions that, as nearly as practicable, follow the Indiana Rules of Civil Procedure pertaining to discovery proceedings.
- (e) At the discretion of the hearing officer, or upon the request of either party, a pre-hearing conference shall be ordered for the purpose of obtaining admissions, narrowing the issues presented by the pleadings, requiring an exchange of the names and addresses of prospective witnesses and the general nature of their expected testimony, considering the necessity or desirability of amendments to the verified complaint and answer thereto, and such other matters as may aid in the disposition of the action.
- (f) The grievant, the respondent, and the Commission shall be given not less than fifteen (15) days written notice of the hearing date. The respondent shall have the right to attend the hearing in person, to be represented by counsel, to cross-examine the witnesses testifying against him or her and to produce at the hearing and require the production of evidence and witnesses in his or her own behalf at the hearing, as in civil proceedings. All notices connected with processing of such complaint shall be issued only under the direction of the hearing officer or hearing officers, and no other court or judicial officer of this State shall have jurisdiction to issue any orders or processes in connection with a disciplinary complaint. Upon request of a party, the hearing officer may issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it or his or her attorney, who shall fill it in before service. The hearing officer may also authorize an attorney admitted to practice law in this state who has appeared for a party, as an officer of the court, to issue and sign such subpoena. Subpoenas for the attendance of witnesses and production of documentary evidence shall conform to the provisions of Trial Rule 45. The hearing officer or officers shall have authority to enforce, quash or modify subpoenas upon proper application by an interested party or witness.
- (g) The proceedings may be summary in form and shall be without the intervention of a jury and shall be reported.
- (g) Within thirty (30) days after the conclusion of the hearing, the hearing officer shall determine whether misconduct has been proven by clear and convincing evidence and shall submit to the Supreme Court written findings of fact. Either party may request or the hearing officer at his or her own motion may make a recommendation concerning the disposition of the case and the discipline to be imposed. Such recommendation is not binding on the Supreme Court. A copy of said findings and any recommendations shall be served by the hearing officer on the respondent and the Executive Secretary of the Disciplinary Commission at the time of filing same with the Supreme Court.

Section 15. Supreme Court Review.

- (a) The respondent or Commission shall have thirty (30) days after the filing of the hearing officer's finding and recommendation to petition for a review of the same before the Supreme Court. If no petition for review is filed within thirty (30) days of the finding and recommendation of the hearing officer the Supreme Court shall enter judgment or such other appropriate order in the premises.
- (b) In the event a party does not concur in a factual finding made by the hearing officer and asserts error in such finding in the petition for review, such party shall file with the petition for review a record of all the evidence before the hearing officer relating to this factual issue. Within thirty (30) days of the filing of the transcript, opposing parties may file such additional transcript as deemed necessary to resolve the factual issue so raised in the petition for review. Any transcript filed must be settled, signed and certified as true and correct by the hearing officer. The cost of procuring a transcript shall be borne by the party obtaining it for purposes of seeking review.

- (c) The respondent or Commission may file a brief at the time a petition for review is filed. Opposing parties shall have thirty (30) days from the filing of the petition for review to file a brief. The party opposing a petition for review may raise in its brief any issues for review that were not raised in the brief of the party filing the petition for review. The party filing the petition for review shall then have fifteen (15) days to file a reply brief. The brief filed under the provisions of this rule need not conform to the Rules of Appellate Procedure adopted by this Court.

Section 16. Expenses.

The judgment of this Court imposing discipline will normally include an order that the respondent pay the costs and expenses of the proceeding. The Executive Secretary shall prepare an itemized statement of expenses allocable to each case, including expenses incurred in the course of the investigatory, hearing or review procedures under this Rule. The Executive Secretary shall include in the itemized statement of expenses, a fee of \$100 payable to the Clerk of this Court, as reimbursement for the Clerk's processing of all papers in connection with the proceeding. Proceedings for the collection of the costs taxed against the respondent may be initiated by the Executive Secretary on the order approving expenses and costs entered by this Court. An attorney who fails to pay costs and expenses assessed pursuant to this section shall be subject to the provisions of Section 21(j) of this Rule.

Section 17. Resignations and Admission of Misconduct.

- (a) An attorney who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may resign as a member of the bar of this Court, or may consent to discipline, but only by delivering to the Court an affidavit stating that the respondent desires to resign or to consent to discipline and that:
- (1) The respondent's consent is freely and voluntarily rendered; he or she is not being subjected to coercion or duress; he or she is fully aware of the implications of submitting his or her consent;
 - (2) The respondent is aware that there is a presently pending investigation into, or proceeding involving, allegations that there exist grounds for his or her discipline the nature of which shall be specifically set forth;
 - (3) The respondent acknowledges that the material facts so alleged are true; and
 - (4) The respondent submits his or her resignation or consent because the respondent knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, he or she could not successfully defend himself or herself.
- (b) Upon receipt of the required affidavit, this Court shall enter an order approving the resignation or imposing a disciplinary sanction on consent.
- (c) Such order shall be a matter of public record. However, the affidavit required under the provisions of (a) above shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

Section 17.1. Termination of Probation

Unless otherwise provided in the order of probation, an attorney on probation at any time after 10 days prior to expiration of the period of probation may serve on the Executive Secretary (i) an affidavit showing successful compliance with all terms of probation, and (ii) an application for termination of probation. The Executive Secretary shall have ten (10) days after receipt to serve written objections on the attorney. Upon Service of any objection the probation shall continue until further ordered by the Court. If no objection has been served, termination shall be effective ten (10) days (or thirteen (13) days if the application is served by mail) after receipt by the Executive Secretary.

Section 17.2. Revocation of Probation

- (a) *Motion to Revoke.* If the Executive Secretary receives information that an attorney on probation may have violated any condition of probation, the Executive Secretary may file a verified motion to revoke probation with the Court, setting forth specific facts in support of the motion. A motion for revocation of an attorney's probation shall not preclude the Commission from filing independent disciplinary charges based on the same conduct alleged in the motion.

- (b) *Response to Motion.* Within ten (10) days after service of a petition under subparagraph (a), the attorney shall file an answer under penalties of perjury admitting or controverting each of the allegations contained in the revocation motion. A general denial shall not be allowed and, if filed, will be taken as a failure to answer. The attorney's failure to answer timely will be deemed to be an admission to the averments in the motion to revoke probation, unless the Court in its discretion elects to give consideration to any answer that is filed before the Court acts on the revocation motion.
- (c) *Burden of Proof and Matters Considered.* The Executive Secretary has the burden of establishing by a preponderance of the evidence any violations of conditions of probation. Any reliable evidence of probative value may be considered regardless of its admissibility under rules of evidence so long as the opposing party is accorded a fair opportunity to controvert it.
- (d) *Disposition.* After the time for filing an answer has expired, the Court may dispose of the matter on the pleadings and supportive materials or, in the event there are material factual disputes, may refer it to a hearing officer who shall hold a hearing on the revocation motion within fourteen (14) days of the date the hearing officer is appointed. The hearing officer shall file with the Clerk of the Court findings and a recommendation within ten (10) days of the hearing. Following receipt of the hearing officer's findings and recommendation, the Court shall enter an order granting or denying the revocation motion and entering an appropriate disposition consistent with the Court's ruling in the matter.

Section 17.3. Service in Termination and Revocation of Probation Matters

- (a) Service upon the attorney and the Executive Secretary shall be made by personal service or by certified mail return receipt requested. Service shall be complete and sufficient upon mailing when served upon the attorney at his current address of record on the roll of attorneys, regardless of whether the attorney claims the mail.

Section 17.4. Interim Suspension

In addition to a motion for revocation of probation, the Executive Secretary may also file a verified motion setting forth good cause for the immediate interim suspension of the attorney's license to practice. Upon a showing of good cause, the Court may order the attorney's license suspended on an interim basis until such time as the revocation motion has been determined.

Section 18. Petitions for Reinstatement.

- (a) A person who has been suspended from the practice of law under the provisions of this rule, except pursuant to Section 11.1(c) of this rule, may apply for reinstatement by filing with the Clerk of this Court a petition conforming with the requirements of Section 4 of this rule. Nine (9) copies of such petition shall be filed with the Clerk of this Court, together with a filing fee of \$500.00.

A person who has been suspended pursuant to Section 11.1(c) of this rule may petition for reinstatement and pay a filing fee pursuant to subsection (c) of this section. If costs have been imposed as part of an order of suspension, those costs must be paid before any petition for reinstatement is filed.

Upon the filing of such petition and filing fee under this subsection, the commission shall schedule a hearing. After such hearing, the commission shall determine whether the petitioner has met the requirements set forth in Section 4 of this rule and may recommend that the Supreme Court enter an order continuing the suspension or reinstating the petitioner as a member of the Bar of this Court on such terms and conditions as the Supreme Court may deem proper. The applicant for reinstatement may petition this Court for a review of the recommendation of the Commission within thirty (30) days of the entry thereof.

- (b) For the purpose of conducting hearings on petitions for reinstatement, the Commission may request the appointment of a hearing officer or hearing officers, who may but shall not be required to be members of the Commission. Such hearing officers shall have the same powers as the hearing officers provided for in Section 13, and shall hear such petition for reinstatement and make written findings of fact and recommendations to the Commission. Following the receipt of the findings and recommendations of the hearing officer or officers, the Commission shall make its recommendation to this Court on such petition, as set forth in subsection (a) above.

- (c) An attorney suspended pursuant to Section 11.1(c) of this rule may be automatically reinstated by the Supreme Court upon filing a petition for reinstatement and presenting therewith a certified copy of a court order stating that the attorney is no longer in intentional violation of an order for child support. Nine (9) copies of such petition shall be filed with the Clerk of this Court together with a filing fee of two hundred dollars (\$200).
- (d) Any person filing a petition for reinstatement shall be responsible for the payment of any and all costs incurred by the Commission in conducting a hearing upon said petition for reinstatement which exceed the amount of the filing fee provided for in subsection (a) above. Any such costs shall be paid by the petitioner within ten (10) days of the receipt of a statement therefor from the Commission. In no event will there be any refund or rebate of any part of the filing fee as provided for in subsection (a) above.

Section 19. Assistance of Law Enforcement Agencies and to Lawyer Disciplinary Agencies in Other Jurisdictions.

- (a) The Commission, or the Executive Secretary, may request any law enforcement agency or office to assist in an investigation. Such assistance shall include the furnishing of all available information about the respondent.
- (b) The Supreme Court may order a person domiciled or found within this state to give testimony or a statement or to produce documents or other things for use in a lawyer discipline or disability proceeding in another state. The order may be made upon the application of any interested person or in response to a letter rogatory, and may prescribe the practice and procedure, which may be wholly or in part the practice and procedure of a tribunal outside this state, for the taking of the testimony or statement or producing the documents or other things. To the extent that the order does not prescribe otherwise, the practice and procedure shall be in accordance with the applicable provisions of the Indiana Rules of Trial Procedure. The order may direct that the testimony or statement be given, or document or other thing be produced, before a person appointed by the Court. A person may be required to give testimony or a statement only in the county wherein he or she resides or is employed or transacts business in person, or at such other convenient place as is fixed in the order. The person appointed shall have the power to administer any necessary oath. Any order to testify or to produce documents or other things issued as prescribed in this subsection may be enforced in the circuit court of the county wherein the person commanded to appear is domiciled, upon petition of any party interested in the subject attorney discipline or disability proceeding.

Section 20. Immunity.

Each person shall be immune from civil suit for all of his or her sworn or written statements, made without malice, and intended for transmittal either: a) to the Commission, the Executive Secretary, or the Commission staff, or made in the course of investigatory, hearing or review proceedings under this rule; or b) to a Lawyers Assistance Program approved by the Supreme Court. Sworn or written statements made to others which are not intended for such transmittal have no immunity under this Section. The Executive Secretary, his staff, counsel, investigators, hearing officers, and the commissioners shall be immune from suit for any conduct arising out of the performance of their duties.

Section 21. Annual Registration Fee.

Funds necessary to enable the Commission to carry out its functions, obligations and duties under this rule shall be provided as follows:

- (a) *Annual Registration Fee—Active Attorneys.* Except as provided in subsection (b). each attorney who is a member of the bar of this Court on August 1, 1978, each attorney who is a member on August 1, of each year thereafter, and each attorney admitted pro hac vice pursuant to Admission and Discipline rule 3, Section 2, shall so long as the attorney is a member of the Bar of this Court, pay a registration fee of ninety dollars (\$90.00) a year on or before October 1 of such year. A delinquent fee in the amount of fifty dollars (\$50.00) shall be added to the registration fee for fees paid after October 1 and on or before October 15 of each year; a delinquent fee in the amount of one hundred dollars (\$100.00) shall be added to the registration fee for fees paid after October 15 and on or before December 31 of each year; and a delinquent fee in the amount of two hundred and fifty dollars (\$250.00) shall be added to the registration fee for fees paid after December 31 of each year. An attorney who has paid the

registration fee under this subsection and any applicable delinquent fees and who is otherwise eligible to practice law in this state shall be considered to be in active good standing.

Any attorney admitted to practice law in this State on a date subsequent to August 1 of each year shall, within ten (10) days of the date of his or her admission to the Bar of the Court, or by October 1 of said year, whichever date is later, pay a registration fee of ninety dollars (\$90.00). The Clerk of this Court shall furnish to the Commission the names and addresses of all persons admitted to practice subsequent to August 1 of each year as said persons are admitted.

- (b) *Annual Registration Fee—Inactive or Retired Attorneys.* One-half (1/2) of the registration fee referred to in subsection (a) shall be required of an attorney who files with the Clerk, on or before the date the registration fee referred to in subsection (a) would otherwise be due, an affidavit of inactivity, stating that he or she is currently in active good standing, and that he or she neither holds judicial office nor is engaged in the practice of law in this State. A delinquent fee in the amount of fifty dollars (\$50.00) shall be added to the registration fee for fees paid after October 1 and on or before October 15 of each year; and a delinquent fee in the amount of one hundred dollars (\$100.00) shall be added to the registration fee for fees paid after October 15 of each year.

An attorney who is sixty-five (65) years old or older and files such an affidavit of inactivity may designate his or her affidavit as a Retirement Affidavit and shall thereafter be exempt from the payment of any registration fee. Such an affidavit of inactivity once filed shall be effective for each succeeding year, and as long as it is effective, in each succeeding year the attorney, unless otherwise exempt, shall pay the registration fee provided for in this subsection. An inactive attorney shall promptly notify the Clerk of a desire to return to active status, and pay the applicable registration fee for the current year, prior to any act of practicing law. An attorney who has paid the registration fee under this subsection and any applicable delinquent fees shall be considered to be in inactive good standing.

- (c) *IOLTA Certification.* Every lawyer admitted to practice law in this State shall, on or before October 1 of each year, certify to the Clerk of this Court that all client funds which are nominal in amount or to be held for a short period of time by the lawyer are held in an IOLTA account (as that term is defined in *Indiana Rules of Professional Conduct, Rule 1.15(d)*) of the lawyer or law firm or that the lawyer is exempt because:

- (1) the lawyer or law firm's client trust account has been exempted from and removed from the IOLTA program pursuant to Ind. Prof. Cond. R. 1.15(d)(6);
- (2) the lawyer has elected to decline to maintain the IOLTA account described in Ind. Prof. Cond. R. 1.15(d), in accordance with the procedures set forth in Ind. Prof. Cond. R. 1.15 (f); or
- (3) the lawyer:
 - (A) is not engaged in the private practice of law;
 - (B) does not have an office within the State of Indiana;
 - (C) is a judge, attorney general, public defender, U.S. attorney, district attorney, on duty with the armed services or employed by a local, state or federal government, and is not otherwise engaged in the private practice of law;
 - (D) is a corporate counsel or teacher of law and is not otherwise engaged in the private practice of law; or
 - (E) has been exempted by an order of general or special application of this Court, which is cited in the certification.

- (d) *Annual Registration Fee Notice.* On or before August 1 in each year, the Clerk of this Court shall mail to each attorney then admitted to the bar of this Court and in active or inactive good standing or practicing law in this state, a notice that: (i) the registration fee must be paid on or before October 1; and (ii) the certification required by subsection (c) of this rule and by Ind. Prof. Cond. R. 1.15(e) must be filed with the Clerk on or before October 1. The Clerk shall also send a copy of such notice to each Clerk for each circuit and superior court in this State for posting in a prominent place in the courthouse and to the Indiana State Bar Association and such print and other media publishers of legal information as the Clerk reasonably determines appropriate. Provided, however, that the failure of the Clerk to send such notice will not mitigate the duty to pay the required fee and file the required certification.

(e) Failure to Pay Registration Fee; Reinstatement. Any attorney who fails to pay a registration fee required under subsection (a) or (b) or fails to file the certification required by subsection (c) of this rule and by Ind.Prof. Cond.R. 1.15(e), shall be subject to sanctions for contempt of this Court in the event he or she thereafter engages in the practice of law in this State. In the event there is no other basis for the continued suspension of the attorney's license to practice law, such (existing language) an attorney's privilege to practice law shall be reinstated upon submission to the Clerk of a written application for reinstatement and payment of:

- (1) the applicable unpaid registration fee for the year of suspension;
- (2) any delinquent fees for the year of suspension due pursuant to subsection (a) or (b);
- (3) the applicable unpaid registration fee for the year of reinstatement, if different from the year of suspension;
- (4) a registration fee, including delinquent fees, in the amount referred to in subsection (b) for all intervening years of suspension; and
- (5) an administrative reinstatement fee of two hundred dollars (\$200.00).

The Clerk shall distribute the administrative reinstatement fee referred to in subsection (e)(5) in equal shares to the Disciplinary Commission Fund and the Continuing Legal Education Fund.

(f) Reinstatement of Retired Attorneys. In the event there is no basis for the suspension of the attorney's license to practice law, a retired attorney's privilege to practice law shall be reinstated upon submission to the Clerk of a written application of reinstatement and payment of:

- (6) the unpaid registration fee for the year of reinstatement;
- (7) a registration fee, including delinquent fees, in the amount referred to in subsection (b) for each year of retirement; and
- (8) an administrative reinstatement fee of two hundred dollars (\$200.00).

(g) Certification of Good Standing. The Clerk of this Court shall issue a certificate of active good standing or inactive good standing approved by this Court to any attorney upon the receipt of the annual registration fee and any applicable delinquent fees referred to in subsections (a) and (b), respectively. The Certificate of active good standing shall include a statement to the effect that the lawyer has either filed the certification required by subsection (c) of this rule or has elected to decline to maintain accounts in accordance with the provisions of said subsection.

(h) Use of Funds. All funds collected by the Clerk of this Court on behalf of the Disciplinary Commission shall be deposited in a special account to be maintained by the Clerk and designated "Clerk of the Courts-Annual Fees." As collected, the Clerk shall thereafter issue those funds to the Disciplinary Commission, and the Executive Secretary shall cause the same to be deposited into a special account designated "Supreme Court Disciplinary Commission Fund." Disbursements from the fund shall be made solely upon vouchers signed by or pursuant to the direction of the Chief Justice of this Court. All salaries to be paid shall be specifically ordered and approved by this Court.

(i) Effective Dates.

(1) The requirement in subsection (b) that inactive attorney pay an annual registration fee shall apply to all inactive attorneys and shall be effective for the annual fee due on or before October 1, 2002. Notwithstanding any other provision in this section, any inactive attorney who filed an affidavit of inactivity on or before October 1, 2001 and who, after suspension for nonpayment of the annual registration fee referred to in subsection (b), thereafter seeks reinstatement to active attorney registration or delinquent fees for any year prior to October 1, 2002.

(2) Notwithstanding any other provision in this section, any attorney who, after suspension for nonpayment of the annual registration fee referred to in subsection (a), thereafter seeks reinstatement to active attorney status pursuant to subsection (e), shall not be required to pay unpaid registration or delinquent fees pursuant to subsection (e)(4) for any year prior to October 1, 2002.

(3) Notwithstanding any other provision in this section, any retired attorney who seeks reinstatement to active attorney status pursuant to subsection (f) shall not be required to pay unpaid registration or delinquent fees pursuant to subsection (f)(2) for any year prior to October 1, 2002.

- (j) An attorney who fails to pay costs, expenses and reimbursements assessed pursuant to Section 10(f)(5) or 16 of this Rule by the due date of the annual registration fee required under subsection (a) or (b) shall be subject to an order of suspension from the practice of law as provided for in subsection (e).
- (k) An attorney in good standing and who is not the subject of an investigation into, or a pending proceeding involving, allegations of misconduct, who desires to relinquish permanently his or her license to practice law in the State of Indiana may do so by petitioning the Supreme Court and filing an Affidavit of Permanent Withdrawal from the practice of law in this State. An attorney whose petition is granted shall not be eligible for reinstatement under section (e) or (f), but may apply for admission under Admission and Discipline Rule 3 through 21.

Section 22. Public Disclosure.

- (a) Except as provided in Section 22(b), after a verified complaint has been filed with the Court, all proceedings, except for adjudicative deliberations, and all papers filed of record with the Clerk shall be open and available to the public. Proceedings and papers that relate to matters that have not resulted in the filing of a verified complaint shall not be open and available to the public. Investigative reports and other work product of the Executive Secretary or his or her agents shall be confidential and not open to public inspection.
- (b) Hearings before hearing officers shall be open to the public. However, hearing officers may, in the exercise of sound discretion, order a closed hearing or other appropriate relief on the motion of the hearing officer, or at the request of the Commission or the respondent if, in the opinion of such hearing officer, the conduct of a closed hearing is necessary for any of the following purposes:
 - (1) For the protection of witnesses;
 - (2) To prevent likely disruption of the proceedings;
 - (3) For the security of the hearing officer, or any of the parties to the proceedings;
 - (4) To prevent the unauthorized disclosure of attorney-client confidences not at issue in the proceeding;
 - (5) For any other good cause shown which in the judgment of the hearing officer requires such hearing to be closed.

Section 23. Annual Report

The commission shall make an annual report of its activities to the Supreme Court and the Indiana State Bar Association. The report shall include a statement of income and expenses for the year.

Section 24. Rules of Procedure.

The Commission may adopt rules and regulations for the efficient discharge of its power and duties. Such rules and regulations shall become effective upon approval by a majority of this Court.

Section 25. Proceedings to Determine Disability.

- (a) A member of the Commission, a member of the Bar of this Court, the Executive Secretary, any individual or any bar association of this State, may at any time file a verified petition with the Commission alleging that an attorney is disabled and should be suspended from the practice of law by reason of physical or mental illness or infirmity, or because of the use of or addiction to intoxicants or drugs.
- (b) If such petition is filed by a member of the Bar of this Court, by any other person or by a bar association, the Executive Secretary shall conduct an investigation of the facts stated in said petition and make a report with a recommendation to the Commission at its next meeting.
- (c) If the petition is filed by a member of the Commission or the Executive Secretary, or if after the investigation by the Executive Secretary, the Commission determines that there is good reason to believe that disability exists which would justify suspension of the attorney named in said petition, the Commission shall hold a hearing to determine if said attorney should be suspended because of such disability. For the purpose of conducting such hearing, the Commission may request the appointment of a hearing officer or hearing officers as provided in Section 18(b). The Commission shall report its findings and recommendations to this Court. The findings and recommendations to this Court may include a written recommendation for suspension pending final determination of the petition, and may also include a recommendation that the Court appoint a member of the Bar of this Court to inventory

the client file of said attorney and to report to the Court the status of said matters, and this Court may forthwith enter an order of suspension upon such recommendation. The respondent shall have fifteen (15) days thereafter to petition this Court for a review and a dissolution of such order.

- (d) If the Commission recommends suspension, the respondent attorney shall have thirty (30) days after the filing of the report and recommendations of the commission to petition this Court for a review of the same. If no petition for review is filed within thirty (30) days of the findings and recommendations of the Commission, this Court shall enter an order of suspension of said attorney for the duration of such disability.
- (e) In the event that this Court grants a petition under this section, briefs may be filed and oral arguments heard, as this Court shall determine. Such briefs need not conform to the rules of this Court. Upon a review, this Court shall determine whether the findings and recommendations of the Commission are supported by sufficient evidence, and shall enter its judgment, with or without opinion, as this Court shall determine.
- (f) Any attorney suspended for disability as provided in this section shall have the right to petition for reinstatement upon the termination of such disability in accordance with sections 4 and 18 of this rule.

Section 26. Duties of Disbarred or Suspended Attorneys.

(a) Duties of Disbarred Attorneys.

- (1) In any case where an attorney has been disbarred under the provisions of this rule, said attorney shall promptly notify or cause to be notified by registered or certified mail, return receipt requested, all clients being represented by him or her in pending matters, of the disbarment and the attorney's consequent inability to act as an attorney. Such notice shall advise said clients to seek legal advice of the client's own choice elsewhere.
- (2) In addition to notifying clients as set forth above, the attorney who has been disbarred shall move in the Court or agency in which any proceeding is pending for leave to withdraw as such attorney, shall notify all attorneys for adverse parties in such proceedings, and shall furnish the address of the client involved to the Court or agency and to the attorneys for adverse parties.
- (3) Any attorney who has been disbarred under the provisions of this rule shall make available to any of his or her clients, to new counsel for any of said clients or to any other person designated by the Court having appropriate jurisdiction all papers, documents, files or information which may be in his or her possession.
- (4) Within thirty (30) days after the effective date of the disbarment order, the disbarred attorney shall file with this Court an affidavit showing that he or she has fully complied with the provisions of the order and with these rules and also stating all other State, Federal and Administrative jurisdictions to which the attorney has been admitted to practice. The disbarred attorney shall also serve a copy of such affidavit upon the Executive Secretary and shall set forth the address where communications may thereafter be directed to him or her.
- (5) An attorney whose resignation from the Bar has been accepted pursuant to Section 17 of this rule shall comply with the provisions of this section.

- (b) *Duties of Disbarred and Suspended Attorneys.* Upon receiving notice of the order of suspension or disbarment, the respondent shall not undertake any new legal matters between service of the order and the effective date of the discipline. Upon the effective date of the order, the respondent shall not maintain a presence or occupy an office where the practice of law is conducted. A respondent suspended for more than six (6) months or disbarred shall take such action as is necessary to cause the removal of any indicia of lawyer, counselor at law, legal assistant, law clerk or similar title.

- (c) *Duties of Suspended Attorneys.* The suspended attorney shall, within twenty (20) days from the date of the notice of the suspension, file with the Court an affidavit showing that:

- (1) All clients being represented by the attorney in pending matters have been notified by certified mail, return receipt requested, of the nature and duration of the suspension, and all pending matters of clients requiring the attorney's services during the period of suspension have been placed in the hands and care of an attorney admitted to practice before the Supreme Court of Indiana with the consent of the client.

- (2) Clients not consenting to be represented by substitute counsel have been advised to seek the services of counsel of their own choice.
- (3) Proof of compliance with this section of the rule shall be a condition precedent to reinstatement.

Section 27. Protection of Clients' Interests.

Whenever an attorney has been disbarred or suspended and has not fully complied with the provisions of *Section 26* above, or if an attorney has disappeared or died or is otherwise unable to comply with said section, the judge of the circuit court of the county in which said attorney maintained a practice shall, upon proper proof of such facts, appoint an attorney or attorneys to inventory the files of said attorney and take such action as may be appropriate to protect the interests of said attorney and his or her clients.

Any attorney so appointed shall not disclose any information contained in any such files without the consent of the client to whom such file relates, except as necessary to carry out the order of the court which appointed the attorney.

Section 28. Discipline Imposed by Other Jurisdictions.

- (a) Within fifteen (15) days of the issuance of any final order in another jurisdiction imposing a public disciplinary sanction, a lawyer admitted to practice in this state shall notify the Executive Secretary in writing of the discipline. Upon notification from any source that a lawyer admitted to practice in Indiana has been publicly disciplined in another jurisdiction, the Executive Secretary shall obtain a certified copy of the order of discipline.
- (b) Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in Indiana has been disciplined in another jurisdiction, resulting in suspension or revocation of the lawyer's license to practice law in that jurisdiction, disbarment or acceptance of resignation with an admission of misconduct, the Executive Secretary shall file a notice with the Court, attaching a certified copy of the order of discipline, and request the issuance of an order to the Executive Secretary and the lawyer directing them to show cause in writing within thirty (30) days from service of the order why the imposition of identical discipline in this state would be unwarranted.
- (c) Upon the expiration of thirty (30) days from service of the order set out in subsection (b), this Court shall impose discipline identical to that ordered in the other jurisdiction unless the Executive Secretary or the lawyer demonstrate, or this Court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:

- (1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
- (2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject;
- (3) The imposition of the same discipline by the Court would be inconsistent with standards governing sanctions in this rule or would result in grave injustice; or
- (4) The misconduct established warrants substantially different discipline in this state.

If this Court determines that any of those elements exists, this Court shall enter such other order of discipline as it deems appropriate. The burden is on the party seeking different discipline in this state to demonstrate that the imposition of the same discipline is unwarranted.

- (d) In all other aspects, a final adjudication in another jurisdiction that a lawyer has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this state.

Section 29. Maintenance Of Trust Funds In Approved Financial Institutions; Overdraft Notification.

- (a) *Clearly Identified Trust Accounts In Approved Financial Institutions And Related Recordkeeping Requirements.*

- (1) Attorneys shall deposit all funds held in trust in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts" and shall inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor or

- otherwise. Attorney trust accounts shall be maintained only in financial institutions approved by the Commission.
- (2) Every attorney shall maintain and preserve for a period of at least five (5) years, after final disposition of the underlying matter, the records of trust accounts, including checkbooks, canceled checks, check stubs, written withdrawal authorizations, vouchers, ledgers, journals, closing statements, accounting or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property held in trust.
 - (3) The "ledger" required by this rule shall set forth a separate record of each trust, client or beneficiary, the source of all funds deposited in that account, the names of all persons for whom the funds are, or were, held, the amount of such funds, the description and the amounts of charges or withdrawals, and the names of all persons to whom such funds were disbursed.
 - (4) All receipts shall be deposited intact, funds shall not be commingled with other funds of the attorney or firm, and records or deposits shall be sufficiently detailed to identify each item.
 - (5) Withdrawals shall be based upon a written withdrawal authorization stating the amount of the withdrawal, the purpose of the withdrawal, and the payee. The authorization shall contain the signed approval of an attorney. Withdrawals shall be made only by check payable to a named payee and not to "cash", or by wire transfer. Wire transfers shall be authorized by written withdrawal authorization and evidence by a document from the financial institution indicating the date of the transfer, the payee and the amount.
 - (6) Only an attorney admitted to practice law in this jurisdiction or his or her designee shall be an authorized signatory on the account.
 - (7) Records required by this rule may be maintained by electronic, photographic, computer or other media provided they otherwise comply with this rule and provided further that printed copies can be produced.
 - (8) Upon dissolution of any partnership of attorneys or of any professional corporation of attorneys, the partners or shareholders shall make appropriate written arrangements for the maintenance of the records specified under this rule.
 - (9) Upon the disposition of a law practice, appropriate written arrangements for the maintenance of the records specified in this rule shall be made.
- (b) *Overdraft Notification Agreement Required.* A financial institution shall be approved as a depository for trust accounts if it files with the Commission an agreement, in a form provided by the Commission, to report to the Commission whenever any properly payable instrument is presented against a trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Commission shall establish rules governing approval and termination of approved status for financial institutions, and shall annually publish a list of approved financial institutions. No trust account shall be maintained in any financial institution that does not agree so to report. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty (30) days' notice in writing to the Commission.
- (c) *Overdraft Reports.* The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:
- (1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors.
 - (2) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.
- (d) *Timing of Reports.* Reports under subsection (c) shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds.

- (e) *Consent By Attorneys.* Every attorney practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.
- (f) *Costs.* Nothing herein shall preclude a financial institution from charging a particular attorney or law firm for the reasonable cost of producing the reports and records required by this rule.
- (g) *Definitions.* For purposes of this rule:
 - (1) "Financial institution" includes a bank, savings and loan association, credit union, savings bank, and any other business or person that accepts for deposit funds held in trust by attorneys.
 - (2) "Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.
 - (3) "Notice of dishonor" refers to the notice that a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument that the institution dishonors.

Section 30. Audits of Trust Accounts.

- (a) *Generally.* Whenever the Executive Secretary has probable cause to believe that a trust account of an attorney contains, should contain, or has contained funds belonging to a client that have not been properly maintained or properly handled pursuant to *Section 28*, the Executive Secretary shall request the approval of the Commission to audit the accuracy and integrity of all trust accounts maintained by the attorney. In the event that the Commission approves, the Executive Secretary shall proceed to audit the accounts.
- (b) *Confidentiality.* Investigations, examinations, and audits shall be conducted so as to preserve the private and confidential nature of the attorney's records insofar as is consistent with these rules.

[¹] Publisher's Note: The material in brackets is not part of the official court rule text.

Amended April 1, 1967; amended June 23, 1971; amended July 13, 1971; amended Nov. 30, 1971; amended March 15, 1972; amended March 14, 1973; amended June 11, 1975; amended Nov. 24, 1975, effective Jan. 31, 1976; amended Dec. 23, 1976, effective Jan. 1, 1977; amended Dec. 14, 1977, effective Jan. 1, 1978; amended Dec. 13, 1979, effective Jan. 1, 1980; amended Nov. 20, 1980, effective Jan. 1, 1981; amended effective April 22, 1981; amended effective Jan. 29, 1985; amended effective July 1, 1986; amended effective Sept. 9, 1986; amended Oct. 15, 1986, effective Jan. 1, 1987; amended Nov. 25, 1986, effective Jan. 1, 1987; amended effective Nov. 12, 1987; amended effective Nov. 10, 1988; amended Nov. 27, 1990, effective Jan. 1, 1991; amended March 11, 1991, effective July 1, 1991; amended Sept. 9, 1991, effective Jan. 1, 1992; amended Oct. 30, 1992, effective Jan. 1, 1993; amended effective May 25, 1993; amended Dec. 5, 1994, effective Feb. 1, 1995; amended effective Feb. 1, 1996 (except section 29, amended effective Jan. 1, 1997).

Amended Dec. 23, 1996, effective March 1, 1997; amended effective July 1, 1997; amended June 27, 1997, effective August 1, 1997; amended Nov. 25, 1997, effective Jan. 1, 1998; amended Oct. 22, 1997, effective Feb. 1, 1998; amended Jan. 16, 1998, effective Feb. 1, 1998; Subsec. (21)(c) held in abeyance until further order of Court per court order filed and effective September 30, 1998; order of Sept. 30, 1998, holding Subsec. (21)(c) in abeyance, is terminated per court order filed and effective October 29, 1999; amended and effective Feb. 4, 2000; amended Dec. 22, 2000, effective Jan. 1, 2001; amended July 1, 2003, effective August 1, 2003; amended Sep. 30, 2004, effective Jan. 1, 2005.

Rule 24. Rules Governing the Unauthorized Practice of Law

Original actions, under 33-2-3-1, to restrain or enjoin the unauthorized practice of law in this state may be brought in this court by the attorney general, the Indiana Supreme Court Disciplinary Commission, 5th Indiana State Bar Association or any duly authorized committee thereof, without leave of court, and by any duly organized local bar association by leave of court. The action against any person, firm, association or corporation, shall be brought by verified petition, in the name of the state of Indiana, on the relation of the authorized person or association or committee, and shall charge specifically the acts constituting the unauthorized practice.

Within time allowed, a respondent may file a verified return showing any reason in law or fact why an injunction should not issue. No other pleading in behalf of a respondent will be entertained. All allegations of fact in the petition and return shall be specific and not by way of ultimate fact or conclusion. The return shall specifically deny or admit each allegation of fact in the petition, and it may allege new facts in mitigation or avoidance of the causes alleged in the petition.

The parties shall file an original and five [5] copies of all pleadings, including exhibits, plus an additional copy for each adverse party. If any exhibit shall be a matter of public record one [1] certified copy thereof shall be filed with the original petition or return. No pleading or exhibit thereto will be considered which has words or figures on both sides of the same sheet of paper.

No restraining order will issue without notice except upon the filing of an undertaking with conditions and surety to the approval of the court. Notice of the filing of the petition will be given and served upon any respondent as may be directed by the court, such notice to be accompanied by a copy of the petition. The clerk will mail a copy of any return to the relator.

The verified petition and return shall constitute the evidence upon which the issues are decided, unless the court shall deem it necessary to, and shall appoint, a commissioner, in which event such commissioner, who shall have full authority to subpoena witnesses and records, shall hear the evidence and report his findings of fact to the court.

A copy of any pertinent agreement, made by any recognized bar association concerning the unauthorized practice of law, may be attached to and made a part of any pleading and unless denied under oath shall be deemed to be a true copy without further proof of the execution thereof.

The costs and expenses incurred by such hearing shall be borne by the losing party. Briefs need not conform to requirements of Appellate Rules 43-48. Arguments will not be heard as of right.

Adopted Oct. 21, 1952; renumbered June 23, 1971; readopted April 24, 1973, effective June 23, 1971.

Rule 25. Judicial Disciplinary Proceedings

***Preamble.** The regulation of judicial conduct is critical to the integrity of the judiciary and to public confidence in the judicial system. The purpose of this rule is to provide a mechanism for the discipline of judicial officers of the State of Indiana.*

I. Jurisdiction.

- A. Pursuant to Article 7, Section 4 of the Constitution of Indiana, the Supreme Court of Indiana (the Supreme Court) has exclusive, original jurisdiction for the discipline, removal, and retirement of all judicial officers of this state.
- B. The Indiana Commission on Judicial Qualifications (the Commission), established by Article 7, Section 9 of the Constitution of Indiana, shall receive and investigate complaints against all judicial officers of the state, regardless of the origin of such judicial position, and shall, in accordance with the procedures established under these rules, forward to the Supreme Court of Indiana any recommendation for the discipline, removal, or retirement of any judicial officer of this state. This provision shall not in any way curtail the authority of Judicial Nominating Commissions appointed in any county of this state.
- C. The Commission shall have jurisdiction over conduct committed by a judicial officer, whether or not related to the judicial office and whether or not committed during the judicial officer's term of office.
- D. The Commission may refer to the Indiana Supreme Court Disciplinary Commission allegations of misconduct committed by a judicial officer while an attorney and not during the judicial officer's term of office.
- E. The Commission shall have jurisdiction over violations of Canon 5 of the Code of Judicial Conduct committed by a candidate for judicial office.

F. The jurisdiction of the Commission survives the resignation or retirement of a judicial officer.

II. Application and Definitions. These rules shall apply to all judicial officers of the State of Indiana regardless of the origin of their judicial office.

For the purposes of this rule the following definitions shall apply:

"Deferred Resolution"--A confidential agreement between the Commission and a judicial officer entered into prior to the filing of formal proceedings which defers the resolution of a complaint for a specific period of time upon condition that the judicial officer take appropriate specified corrective action.

"Judicial Officer"--A Justice of the Indiana Supreme Court, Judge of the Indiana Court of Appeals, Judge of the Indiana Tax Court, Judge of any Circuit, Superior, County, City or Town Court of the State, and a pro tempore or senior judge, magistrate, commissioner, master or referee thereof, and any person eligible to perform a judicial function, whether or not a lawyer, whether part-time or full-time, temporary or permanent, excluding mediators and arbitrators and administrative law judges of independent state agencies. This rule applies to candidates for judicial office who are subject to the jurisdiction of the Commission as if they were judicial officers.

"Private Caution"--A confidential statement from the Commission to a judicial officer stating that the Commission has inquired into or investigated a complaint and has considered the judicial officer's written response to the allegations, and has voted to close the inquiry or investigation by cautioning the judicial officer that misconduct was established which, in light of all the circumstances, does not warrant further inquiry.

"Public Admonition"--A public statement from the Commission concluding that misconduct occurred, which is issued by the Commission after a determination that formal proceedings are warranted and which is issued in lieu of formal proceedings and with the written consent of the judicial officer.

"Settlement Agreement"--A written agreement submitted to the Supreme Court after the Commission has filed charges, and after the judicial officer has had an opportunity to answer, in which the parties agree to facts which establish grounds for discipline under this rule and to an appropriate sanction.

III. Grounds for Discipline or Involuntary Retirement.

- A. Any judicial officer may be disciplined for any of the following acts:
 - (1) conviction of any felony, or any crime which involves moral turpitude or conduct that adversely affects the ability to perform the duties of judicial office;
 - (2) willful and persistent failure to perform duties;
 - (3) willful misconduct in office;
 - (4) willful misconduct unrelated to the judicial office that brings such office into disrepute;
 - (5) habitual intemperance;
 - (6) conduct prejudicial to the administration of justice, including the repeated failure to adhere to the rules of procedure; or
 - (7) a violation of the Code of Judicial Conduct, the Rules of Professional Conduct, or other professional rules duly adopted by the Indiana Supreme Court.
- B. A judicial officer may be involuntarily retired when a physical or mental disability seriously interferes with the performance of judicial duties.
- C. A judicial officer involuntarily retired by the Supreme Court shall be considered to have retired voluntarily. A judicial officer removed from office by the Supreme Court under an order of discipline, excluding retirement or disability, shall be ineligible for judicial office and, pending further order of the Supreme Court, shall be suspended from the practice of law in the State of Indiana.
- D. These rules shall not be construed to impair any vested right or benefit of a judicial officer, now or hereafter existing as provided by law.

IV. Sanctions. Upon a finding of misconduct pursuant to Section III A. or disability pursuant to Section III B., the Supreme Court may impose any of the following:

- (1) removal;
- (2) retirement;
- (3) suspension;
- (4) discipline as an attorney;
- (5) limitations or conditions on the performance of judicial duties;
- (6) private or public reprimand or censure;
- (7) fine;
- (8) assessment of reasonable costs and expenses; or
- (9) any combination of the above sanctions.

V. Interim Suspension.

- A. A judicial officer shall be suspended with pay by the Supreme Court without the necessity of action by the Commission upon the filing of an indictment or information charging the judicial officer in any court in the United States with a crime punishable as a felony under the laws of Indiana or the United States.
- B. A judicial officer shall be suspended with pay while there is pending before the Supreme Court a recommendation from the Commission for the retirement or removal of the judicial officer.
- C. Upon a finding of guilty, plea of guilty, or plea of no contest to a crime punishable as a felony under the laws of Indiana or the United States, or any crime that involves moral turpitude under the law, a judicial officer may be suspended without pay by the Supreme Court.
- D. A judicial officer may be suspended with pay by the Supreme Court without the necessity of action by the Commission upon the filing of an indictment or information charging the judicial officer with a misdemeanor which suggests conduct that adversely affects the ability to perform the duties of the judicial office. In the event the Supreme Court suspends a judicial officer under this provision without a hearing, the suspended judicial officer shall thereafter be permitted a hearing and review of the basis for the suspension.
- E. Upon petition by the Commission, the Supreme Court may impose, pending the disposition of formal charges, an interim suspension with pay if the Court deems the interim suspension necessary to protect public confidence in the integrity of the judiciary. This provision is applicable in proceedings involving the disability of the judge as well as proceedings involving discipline.

VI. Staff.

- A. The Division of State Court Administration shall serve the Commission in the performance of the Commission's constitutional and statutory duties. Any attorney specifically appointed by the Supreme Court for such purpose may serve as Counsel for the Commission in the course of a judicial disciplinary proceeding. In the event a judicial disciplinary proceeding involves a current member of the Supreme Court, a regular employee of the Supreme Court shall not serve as Counsel.
- B. A quorum of the Commission shall have the authority to employ investigators and such experts and staff as the Commission, in its discretion, determines necessary to the performance of its duties.

VII. Immunity. Members of the Commission, Masters, Commission Counsel, and staff are absolutely immune from suit for all conduct in the course of their official duties.

VIII. Disciplinary Procedure.

A. Meetings of Commission.

- (1) The Commission shall meet from time to time as may be necessary to discharge its responsibilities. The Commission shall elect a Vice-Chair to perform the duties of the Chair when the Chair is absent or unable to act by reason of unavailability or disqualification.

Meetings of the Commission shall be called by the Chair, or the Vice-Chair, whenever deemed necessary or upon the request of any four members of the Commission, and each member of the Commission shall be given at least five days' written notice by mail of the time and place of every meeting, unless the Commission at its previous meeting designated the time and place of its next meeting. A quorum for the transaction of business shall be four members of the Commission.

- (2) Meetings of the Commission are to be held at such place in Indiana as the Chair of the Commission, or the Vice-Chair, may arrange.
- (3) The Commission shall act only at a meeting. Meetings may be conducted by telephone conference, electronic mail, written and facsimile communication, or other means of communication, on all matters that do not involve deliberating and voting on whether to file formal charges, when the Commission shall meet in person. The Commission shall have the power to adopt reasonable and proper rules and regulations for the conduct of its meeting and the discharge of its duties.

B. *Confidentiality.*

- (1) Before the filing and service of formal charges, the Commission shall not publicly disclose information relating to a complaint, inquiry, or investigation, except that the Commission may disclose information:
 - (a) upon waiver or agreement by the judicial officer; or
 - (b) where the Commission has determined that there is a need to notify another person or agency in order to protect the public or to assure the proper administration of justice; or
 - (c) where the Commission elects to respond to publicly disseminated statements by a complainant or a judicial officer.
- (2) After the filing of formal charges, all pleadings and proceedings are public unless the Masters or Supreme Court find extraordinary circumstances warranting limitations on the public nature of the proceedings.
- (3) Commission deliberations, settlement conferences, and proposed settlement agreements shall remain confidential.

C. *Civil Immunity.* Each person shall be immune from civil suit for all sworn or written statements, if made without malice, and intended for transmittal only to the Commission, Counsel, or staff, or made in the course of investigatory, hearing, or review proceedings under this rule.

D. *Complaint.* Any person may file a complaint with the Commission about the judicial activities, fitness, or qualifications of any judicial officer. Complaints directed to the Commission or to any member of the Commission concerning a judicial officer shall be in writing and verified. No specified form of complaint shall be required.

E. *Consideration of Complaint.*

- (1) The Commission shall provide written acknowledgment of the complaint and shall notify the complainant in writing of its final disposition.
- (2) The Commission shall make such initial inquiry as is necessary to determine if the complaint is founded and within the jurisdiction of the Commission. The Commission, without receiving a complaint, may make such an initial inquiry on its own motion. The Commission shall dismiss any complaint or inquiry which is frivolous, groundless, not within the Commission's jurisdiction, or upon a finding that no misconduct occurred. The notification of dismissal to the complainant shall contain the basis for the Commission's decision. The Commission may also conduct further inquiry, begin an investigation, agree to a deferred resolution, or issue a private caution. If the final disposition is by deferred resolution or private caution, the judicial officer shall have had the opportunity to respond to the allegations in writing and the complainant shall be notified that appropriate action was taken without specifying the nature of the disposition.

- (3) If the Commission deems it necessary as the result of its initial inquiry to conduct an investigation, the judicial officer involved shall be notified of the investigation, the nature of the charge, and the name of the person making the complaint, if any, or that the investigation is on the Commission's own motion, and shall be afforded a reasonable opportunity in the course of the investigation to present such matters as the judicial officer may choose. Such notice shall be given by certified mail addressed to the judicial officer's chambers or address of record and shall be clearly marked "Personal and Confidential." Delivery of all other papers or notices shall be made in accordance with the Rules of Procedure.
- (4) The Commission shall have such jurisdiction and powers as are necessary to conduct the proper and speedy disposition of any investigation, including the power to compel the attendance of witnesses, to take or cause to be taken the deposition of witnesses, and to order the production of books, records, or other documentary evidence. Any member of the Commission shall have the power to subpoena witnesses or the production of evidence and may administer oaths and affirmations to witnesses in any matter within the jurisdiction of the Commission. The quashing and enforcement of subpoenas, and the enforcement of any other power delegated to the Commission shall be upon application to the Supreme Court or to the Masters, if appointed.
- (5) If the investigation does not disclose probable cause to warrant further proceedings, the Commission may dismiss the complaint with a finding that no misconduct occurred, may conduct further investigation, or may issue a deferred resolution or private caution, and the judicial officer shall be so notified. Where a deferred resolution or private caution is imposed, the judicial officer shall have had an opportunity to respond in writing to the allegations. The Commission shall have the power to make investigations by members of the Commission, staff, or by special investigators employed by the Commission and to hold confidential hearings with the judicial officer involved.
- (6) During the course of an investigation by the Commission, the judicial officer whose conduct is being investigated may demand, in writing, that the Commission either institute formal proceedings or enter a formal finding that there is not probable cause to believe that the judicial officer is guilty of misconduct, and the Commission shall, within sixty days after such demand, comply therewith.
- (7) If, upon the conclusion of a full investigation, the Commission does not find probable cause to believe that misconduct has occurred, the Commission shall dismiss the complaint. If the Commission determines the existence of probable cause, the Commission may vote that one or more of the following is appropriate:
 - (a) dismissal;
 - (b) deferred resolution or private caution;
 - (c) formal charges;
 - (d) petition for suspension;
 - (e) a stay.

At any time after the Commission has determined the existence of probable cause to file charges, the judicial officer may demand that the charges be filed within sixty days rather than consent to a private caution, a public admonition, deferred resolution, or a stay.

If the Commission votes to file formal charges against a judicial officer, it may, with the judicial officer's written consent, dismiss the complaint after issuing a public admonition of the judicial officer's conduct.

F. Notice of Formal Proceedings.

- (1) After the investigation has been completed and the Commission concludes that there is probable cause to believe in the existence of grounds for discipline or involuntary retirement under Section III of this Rule and that formal proceedings should be instituted, it shall give written notice to the judicial officer advising of the institution of formal proceedings. This notice shall be filed as an original action in the Supreme Court.

- (2) The notice shall be issued in the name of the Commission, shall specify in ordinary and concise language the charges against the judicial officer and the alleged facts upon which such charges are based, and shall advise the judicial officer of the right to file a written answer to the charges within twenty days after service of notice. No charge shall be sufficient if it merely recites the general language of the original complaint, but must specify the facts relied upon to support a particular charge.
 - (3) The notice shall be made by certified mail to the judicial officer's chambers or address of record and shall be clearly marked "Personal and Confidential".
 - (4) In the event the notice filed under Rule VIIIF(1) is directed toward a member of the Supreme Court, the provisions of this paragraph shall apply.
 - (a) At the time the notice is filed, all Justices of the Supreme Court, except the Chief Justice, shall recuse themselves from the proceedings. Should the Chief Justice, for any reason, be unable to participate in such proceedings, the most senior member of the Supreme Court, not otherwise disqualified, shall continue to serve. The Chief Justice or the member of the Supreme Court continuing to serve under this provision shall be the presiding member of the Supreme Court for all proceedings relating to the notice.
 - (b) The vacancies on the Supreme Court created by the above procedure shall be filled for the limited purpose of the judicial disciplinary proceedings by members of the Indiana Court of Appeals chosen pursuant to this provision. Six Judges of the Court of Appeals shall be randomly selected by the Clerk of the Supreme Court and Court of Appeals. Advisement of the members of the Court of Appeals selected under this procedure shall be given to the Commission and the judicial officer. Within seven days after advisement of the selection is issued, the Commission shall strike one judge selected and within seven days after the judge is stricken by the Commission, the judicial officer shall strike one judge. If the Commission or the judicial officer fails to strike a judge under this procedure, the Clerk of the Supreme Court shall strike at random in their stead.
 - (c) In the event all members of the Supreme Court are unable to participate in a judicial disciplinary proceeding, the Clerk of the Supreme Court and Court of Appeals shall randomly select seven members of the Indiana Court of Appeals to serve in such proceedings and each side shall strike one judge under the procedure set forth in Rule VIIIF(4)(b) above.
- G. *Answer.* Within twenty days after service of the notice of formal proceedings, the judicial officer may file with the Supreme Court, under the cause initiated by the filing of the notice of formal proceedings, an answer, and serve a copy of the answer on Counsel for the Commission by mail. All pleadings shall be filed with the Clerk of the Supreme Court and shall be served to the Commission at its published address.
- H. *Settlement Agreements.* The Commission and the judicial officer may enter into a settlement agreement, either prior to the appointment of Masters, or at any time prior to a final disposition by the Supreme Court. The Supreme Court may accept the agreement resolving the case or it may reject the agreement and return the matter to the Commission for further action.
- I. *Masters.* Upon the filing of an answer or upon the expiration of the time for its filing, the Supreme Court shall, within thirty days, appoint three Masters and designate a Presiding Master. Each Master shall be an active or retired member of a court of record in the State of Indiana. The Masters shall hear and take evidence in the judicial disciplinary proceeding and report thereon to the Supreme Court. The appointed Masters shall set a time and place for a hearing, to be conducted within ninety days of their appointment, and shall give notice of such hearing to the judicial officer charged and Counsel for the Commission at least twenty days prior to the date set. At the discretion of the Masters, the cause may be set for a pretrial conference or such other hearing as may be deemed necessary under the circumstances. Continuances shall be granted only by agreement or upon good cause shown. All differences of opinion by the Masters shall be resolved by majority vote, except that a minority opinion may be submitted to the Supreme Court with the final report and the recommended findings of fact and conclusions of law.
- J. *Pretrial Procedure.*

- (1) In all formal proceedings, discovery shall be available to the Commission and to the judicial officer in accordance with the Indiana Rules of Trial Procedure. Any motions requesting court orders for discovery shall be made to the Masters appointed to hear the case.
- (2) In all formal proceedings, Counsel for the Commission shall furnish to the judicial officer not less than twenty days prior to any hearing the following, unless modified by agreement or by an order on discovery:
 - (a) The names and addresses of all witnesses whose testimony Counsel expects to offer at the hearing, together with copies of all written statements and transcripts of testimony of such witnesses in the possession of Counsel or the Commission and copies of all documentary evidence which Counsel expects to offer in evidence at the hearing. The testimony of any witness whose name and address has not been furnished to the judicial officer, and documentary evidence copies of which have not been furnished to the judicial officer, as provided above, shall not be admissible in evidence at said hearing over objection.
 - (b) After formal proceedings have been instituted, Counsel shall furnish to the judicial officer, within ten days, the names and addresses of all witnesses, then or thereafter known to Counsel, who have information which may be relevant to any charge against the judicial officer, and to any defense. Counsel shall also furnish copies of such written statements, transcripts of testimony, and documentary evidence as are then or thereafter in the possession of Counsel for the Commission, which are relevant to any such charge or defense and which have not previously been furnished to the judicial officer.

K. *Hearing.*

- (1) At the time and place set for hearing, the Masters may proceed with the hearing whether or not the judicial officer has filed an answer or appears at the hearing.
- (2) The failure of the judicial officer to answer or to appear at the hearing, standing alone, shall not be taken as evidence of the facts alleged or constitute grounds for discipline, retirement, or removal, however the failure to cooperate in the prompt resolution of a complaint by the refusal to respond to Commission requests or by the use of dilatory practices, frivolous or unfounded arguments, or other obdurate behavior may be considered as aggravating factors affecting sanctions or may be the basis for the filing of separate counts of judicial misconduct.
- (3) In any proceeding for involuntary retirement for disability, the failure of the judicial officer to testify in his or her own behalf or to submit to medical examination requested by the Commission or Masters may be considered, unless it appears that such failure was due to circumstances beyond the judicial officer's control.
- (4) The proceedings shall be reported verbatim.
- (5) At the hearing before the Masters for the taking of testimony with regard to the pending charges, the Indiana Rules of Evidence shall apply.
- (6) The Commission shall have the burden to prove misconduct on the part of the judicial officer by clear and convincing evidence.
- (7) Whenever a witness invokes the privilege against self-incrimination as a basis for refusing to answer a question or to produce other evidence that may be relevant to a disciplinary or disability proceeding, the Commission may apply in a court of record for a grant of immunity from criminal prosecution, and shall give notice of the application to the judicial officer and to the prosecuting attorney of the jurisdiction. If the court grants the order, the witness may not refuse to comply with the order on the basis of the privilege of the witness against self-incrimination, but no testimony or other evidence compelled under such an order shall be used against the witness in any criminal case. The witness may be prosecuted for perjury or contempt committed in answering or failing to answer in accordance with the order.
- (8) The Masters shall have such jurisdiction and powers as are necessary to conduct a hearing, including the power to compel the attendance of witnesses, to administer oaths and affirmations, to make findings and issue sanctions for contempt, to take or cause to be taken the deposition of witnesses, and to order the production of books, records, or other

documentary evidence. The quashing and enforcement of subpoenas shall be upon application to the Masters.

L. *Defense Rights of Judicial Officer.*

- (1) In formal proceedings involving discipline, retirement, or removal, a judicial officer shall have the right to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. A judicial officer shall also have the right to the issuance of subpoenas for the attendance of witnesses to testify or to produce books, papers, and other evidentiary matters.
- (2) Whenever a transcript of any proceedings hereunder is requested by the judicial officer, the Commission or Commission Counsel, the Masters or the Supreme Court, it shall be produced promptly, and it shall be provided to the judicial officer without cost.
- (3) If the judicial officer has been adjudicated incompetent, the Supreme Court shall appoint an attorney ad litem unless a guardian has been appointed. The guardian or attorney ad litem shall exercise any right and privilege, make any defense and receive process for the judicial officer.

M. *Amendments to Notice or Answer.* The Masters, at any time prior to the conclusion of the hearing, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judicial officer shall be given reasonable time both to answer the amendment and to prepare and present a defense against the matters charged thereby.

N. *Report of Hearing by Masters.*

- (1) After the conclusion of the hearing, the Masters shall, within forty- five days, file with the Supreme Court a report which shall contain a brief statement of the proceedings, recommended findings of fact and conclusions of law, and any minority opinion. The recommended findings of fact and conclusions of law are not binding upon the Supreme Court. An original and six copies of the report and the original transcript of the testimony together with all exhibits shall be filed with the Supreme Court.
- (2) The Masters may include a recommendation in the report to the Supreme Court as to the discipline, removal, or retirement of the judicial officer involved in the proceeding. The recommended sanction is not binding on the Supreme Court.
- (3) At the time the report and transcript is filed with the Supreme Court, the Masters shall serve a copy of the report and transcript on the judicial officer and Counsel for the Commission.

O. *Recommendation of Commission.* Within thirty days of the filing of the report by the Masters, the Commission shall make a recommendation to the Supreme Court as to the disposition of the judicial disciplinary proceeding under consideration. If the Commission does not concur in the proposed findings of fact, conclusions of law, and, if appropriate, the recommended sanction, the Commission's recommendation as to disposition shall specifically set forth all objections to the report of the Masters and shall be accompanied by a memorandum brief in support of the recommended disposition.

P. *Petition for Review.*

- (1) Within thirty days of the filing of the Commission's recommendation, the judicial officer may file with the Supreme Court a petition for review setting forth all objections to the report or recommendation and the reasons in opposition to the recommended findings of fact, conclusions of law, and, if appropriate, the recommended sanction contained in the report and recommendation. A copy of the petition for review shall be served on all other parties to the proceeding.

- (2) The petition shall be verified, shall be based on the record, shall specify the grounds relied on, and shall be accompanied by a brief in support of the arguments offered. Within twenty days of service of the petition for review and brief, the Commission may file a reply brief.
- (3) Failure to file a petition for review within the time provided may be deemed by the Supreme Court as agreement on the Commission's recommendation. The Supreme Court, however, conducts its review de novo and retains the discretion to adopt or reject all or part of the proposed findings of fact, conclusions of law, or recommended disposition with or without objection by a party.
- (4) To the extent necessary to implement this provision and if not inconsistent with this provision, the Indiana Rules of Appellate Procedure shall be applicable to reviews by the Supreme Court in judicial disciplinary proceedings.

Adopted Nov. 24, 1975, effective Jan. 31, 1976; amended effective March 2, 1989; amended Nov. 30, 1989, effective Jan. 1, 1990.

Amended Dec. 23, 1996, effective March 1, 1997; amended Nov. 25, 1997, effective Jan. 1, 1998.

Rule 26. Group Legal Service Plans

- (A) A "group legal service plan" is a plan or arrangement by which legal services are rendered (1) to individual members of a group identifiable in terms of substantial common interest; (2) by a lawyer provided, secured, recommended or otherwise selected by: (a) the group, its organization, or its officers; (b) some other agency having an interest in obtaining legal services for members of the group; or (c) the individual members. Not-for-profit legal services programs funded through governmental appropriations are excluded from this rule.
- (B) A lawyer may not render legal services pursuant to a group legal service plan unless the following conditions have been satisfied:
 - (1) The entire plan has been reduced to writing and a description of its terms has been distributed to the Indiana members or beneficiaries thereof;
 - (2) The plan and description clearly describe and specify:
 - (a) the benefits to be provided, exclusions therefrom and conditions thereto,
 - (b) the extent of the undertaking to provide benefits and reveal such facts as will indicate the ability of the plan to meet the undertaking,
 - (c) that there shall be no infringement upon the independent exercise of professional judgment of any lawyer furnishing service under the plan,
 - (d) that a lawyer providing legal service under the plan shall not be required to act in derogation of his professional responsibilities,
 - (e) the procedures for the objective review and resolution of disputes arising under the plan,
 - (f) that the plan shall provide for an advisory group which should include members of the Bar and members of the plan who shall meet periodically to review and evaluate the organization and operation of the plan and to offer suggestions for its improvement, and
 - (g) that the plan shall state in writing that the satisfaction of the conditions under this rule shall not be construed as an approval of such plan by the Supreme Court of Indiana;
 - (3) A copy of the group legal service has been filed with the Clerk of the Supreme Court and Court of Appeals together with a one hundred dollar (\$100) filing fee; and
 - (4) The requirements, as appropriate, for an initial disclosure statement or annual report have been met.
- (C) Concurrent with the filing of the plan, an initial disclosure statement, relating to the first year of operation or any portion thereof, also must be filed. This initial disclosure statement shall state:
 - (1) The names and addresses of all the attorneys who will be rendering any legal service for Indiana residents for the coming year or part thereof ending January 31st;

- (2) All relevant financial data including any projected income from fees, dues, premiums, or subscriptions to be collected from Indiana group members or beneficiaries for the first year of operation or part thereof, ending January 31st and the period of time covered by such fee, dues, premium or subscription charge;
 - (3) The total number of hours of legal service projected to be provided to Indiana members;
 - (4) The number of Indiana members in the plan or projected to be in the plan for the first year or part thereof, ending January 31st; and
 - (5) Whether legal service provided under the plan is to be funded, in any part, on an actuarial basis.
- (D) Every group legal services plan shall file an annual report with the Clerk of the Supreme Court. A fifty dollar (\$50) annual fee shall accompany the report. The annual report shall be filed between February 1st and March 31st of each year. A copy of said annual report shall be sent to plan members by March 31st of each year. An additional twenty-five dollar (\$25) late fee shall accompany all annual reports filed after March 31st. The annual report shall update any information regarding the plan as originally filed and shall specifically set forth:
- (1) The names and addresses of all attorneys under the plan who will be rendering any legal service to Indiana residents for the year, ending on January 31st; and
 - (2) All relevant financial data, including:
 - (a) the actual gross income generated by fees, dues, premiums, or subscriptions, paid by Indiana members of the group for the past year or part thereof, ending on January 31st;
 - (b) the number of hours of legal service provided to Indiana members during the past year, and ending January 31st;
 - (c) the number of Indiana members of the plan as of January 31st;
 - (d) the projected gross income, expected to be generated from fees, dues, premiums or subscriptions from Indiana group members during the coming year (February 1st through January 31st); and
 - (e) the amount each Indiana group member will pay as a fee, dues, premium or subscription charge for the next year (February 1st through January 31st).

An annual report form may be obtained from the Clerk of the Supreme Court and Court of Appeals to assist in the filing of the annual report.

- (E) A group legal service plan which discontinues operation, shall file a final report so stating. There shall be no filing fee for such report.
- (F) Whenever a new attorney is employed by any plan, the plan shall, within ten days of the employment, transmit to the Clerk of the Supreme Court and Court of Appeals the name of such attorney so employed.
- (G) No representation that a plan has been filed or approved shall be made. If such representation is made, all function under the plan shall cease.
- (H) Any lawyer rendering legal services in Indiana pursuant to a group legal service plan shall be found by and comply with the Rules of Professional Conduct adopted January 1, 1987, as amended.
- (I) Failure to comply with the above requirements could subject plans and individuals involved to legal action. In addition, if a plan member represented by a plan attorney is a party in an action in a court of this State, any other party to the action may file a motion to dismiss the action if the plan has not filed its initial disclosure statement or its annual report as required under Subsections C and D of this Rule. Provided, however, that the motion to dismiss shall only dismiss the case, after hearing, if the initial disclosure statement and plan or the annual report are not filed with the Clerk of the Supreme Court and Court of Appeals within sixty (60) days after the filing of the motion to dismiss.

ADMISSION AND DISCIPLINE RULE 26.

GROUP LEGAL SERVICE PLAN DISCLOSURE STATEMENT

- 1. Date of Statement _____.
- 2. Name of the Group Legal Services Plan and address of administrator.

3. Names and addresses of all attorneys who will be rendering any legal service under the plan to Indiana residents this year (year ends January 31st of following year):

Name	Address
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

(Use additional sheets if necessary).

4. Relevant Financial Data--Income Projection:

(a) Gross income actually received in the form of fees, dues, premiums, or subscriptions from Indiana members for the past year or part of year (February 1, 19____ to January 31, 19____):
\$_____.

(b) Number of hours of legal service provided to Indiana members during past year: _____.

(c) Number of Indiana members of plan as of January 31, 19____.

5. Projections:

(a) Projected gross income expected from fees, dues, premiums or subscription charges from Indiana members during the coming year (February 1, 19____ to January 31, 19____):
\$_____.

(b) Projected amount each Indiana group member will pay as a fee, dues, premium or subscription charge for the coming year (February 1, 19____ to January 31, 19____).

6. Names and addresses of plan advisory group members:

Name	Address
1.	
2.	
3.	
4.	
5.	

7. Attach one copy of plan as revised during the past year (or revisions).

Submitted By:

Plan Administrator

Adopted Nov. 24, 1975, effective Jan. 31, 1976; amended Dec. 23, 1976, effective Jan. 1, 1977; amended Dec. 13, 1979, effective Jan. 1, 1980; amended Nov. 12, 1986, effective Jan. 1, 1987; amended Jan. 26, 1987, effective Jan. 1, 1987; amended effective Nov. 10, 1988.

Rule 27. Professional Corporations, Limited Liability Companies and Limited Partnerships

One or more lawyers may form a professional corporation, limited liability company or a limited liability partnership for the practice of law under Indiana Code 23-1.5-1, IC 23-18-1 and IC 23-4-1, respectively.

- (a) The name of the professional corporation, limited liability company or limited liability partnership shall contain the surnames of some of its members, partners or other equity owners followed by the words "Professional Corporation," "PC," "P.C.," "Limited Liability Company," "L.L.C.," "LLC," "Limited Liability Partnership," "L.L.P.," or "LLP," as appropriate. Such a professional corporation, limited liability company, or limited liability partnership shall be permitted to use as its name the name

or names of one or more deceased or retired members of a predecessor law firm in a continuing line of succession, subject to Rule of Professional Conduct 7.2.

- (b) The professional corporation, limited liability company or limited liability partnership shall be organized solely for the purpose of conducting the practice of law, and, with respect to the practice of law in Indiana, shall conduct such practice only through persons licensed by the Supreme Court of Indiana to do so.
- (c) Each officer, director, shareholder, member, partner or other equity owner shall be an individual who shall at all times own his or her interest in the professional corporation, limited liability company or limited liability partnership in his or her own right and, except for illness, accident, time spent in the armed services or during vacations and/or leaves of absence, shall be actively engaged in the practice of law through such professional corporation, limited liability company or limited liability partnership.
- (d) The practice of law in Indiana as a professional corporation, limited liability company or limited liability partnership shall not modify any law applicable to the relationship between the person or persons furnishing professional legal services and the person or entity receiving such services, including, but not limited to, laws regarding privileged communications.
- (e) The practice of law in Indiana as a professional corporation, limited liability company or limited liability partnership shall not relieve any lawyer of or diminish any obligation of a lawyer under the Rules of Professional Conduct or under these rules.
- (f) Each officer, director, shareholder, member, partner or other equity owner of a professional corporation, limited liability company, or limited liability partnership shall be liable for his or her own acts of fraud, defalcation or theft or errors or omissions committed in the course of rendering professional legal services as provided by law including, but not limited to, liability arising out of the acts of fraud, defalcation or theft or errors or omissions of another lawyer over whom such officer, director, shareholder, member, partner or other equity owner has supervisory responsibilities under Rule 5.1 of the Rules of Professional Conduct, without prejudice to any contractual or other right that the aggrieved party may be entitled to assert against a professional corporation, limited liability company, limited liability partnership, an insurance carrier, or other third party.
- (g) A professional corporation, limited liability company or limited liability partnership shall maintain adequate professional liability insurance or other form of adequate financial responsibility for any liability of the professional corporation, limited liability company, or limited liability partnership arising from acts of fraud, defalcation or theft or errors or omissions committed in the rendering of professional legal services by an officer, director, shareholder, member, partner, other equity owner, agent, employee or manager of the professional corporation, limited liability company or limited liability partnership.
 - (1) "Adequate professional liability insurance" means one or more policies of attorneys' professional liability insurance or other form of adequate financial responsibility that insure the professional corporation, limited liability company or limited liability partnership or both;
 - (i) in an amount for each claim, in excess of any insurance deductible or deductibles, of fifty thousand dollars (\$50,000), multiplied by the number of lawyers practicing with the professional corporation, limited liability company or limited liability partnership; and
 - (ii) in an amount of one hundred thousand dollars (\$100,000) in excess of any insurance deductible or deductibles for all claims during the policy year, multiplied by the number of lawyers practicing with the professional corporation, limited liability company or limited liability partnership.

However, no professional corporation, limited liability company or limited liability partnership shall be required to carry insurance or other form of adequate financial responsibility of more than five million dollars (\$5,000,000) per claim, in excess of any insurance deductibles, or more than ten million dollars (\$10,000,000) for all claims during the policy year, in excess of any insurance deductible.

The maximum amount of any insurance deductible under this Rule shall be as prescribed from time to time by the Board of Law Examiners.

- (2) "Other form of adequate financial responsibility" means funds, in an amount not less than the amount of professional liability insurance applicable to a professional corporation, limited liability company or limited liability partnership under section (g)(1) of this Rule, available to satisfy any liability of the professional corporation, limited liability company or limited liability partnership arising from acts of fraud, defalcation or theft or errors or omissions committed in the rendering of professional legal services by an officer, director, shareholder, other equity owner, member, partner, agent, employee or manager of the professional corporation, limited liability company or limited liability partnership. These funds shall be available in the form of a deposit in trust of cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit or surety bonds, segregated from all other funds of the professional corporation, limited liability company or limited liability partnership and held for the exclusive purpose of protecting any aggrieved party of the professional corporation, limited liability company or limited partnership in compliance with this Rule.
- (h) Each officer, director, shareholder, member, partner or other equity owner of a professional corporation, limited liability company or limited liability partnership shall be jointly and severally liable for any liability of the professional corporation, limited liability company or limited liability partnership based upon a claim arising from acts of fraud, defalcation or theft or errors or omissions committed in the rendering of professional legal services while he or she was an officer, director, member, shareholder, partner or other equity owner, in an amount not to exceed the aggregate of both of the following:
- (1) The per claim amount of professional liability insurance or other form of adequate financial responsibility applicable to the professional corporation, limited liability company or limited liability partnership under this Rule, but only to the extent that the professional corporation, limited liability company or limited liability partnership fails to have the professional liability insurance or other form of adequate financial responsibility required by this Rule; and
 - (2) The deductible amount of the professional liability insurance applicable to the claim.

The joint and several liability of the shareholder, member, partner or other equity owner shall be reduced to the extent that the liability of the professional corporation, limited liability company or limited liability partnership has been satisfied by the assets of the professional corporation, limited liability company or limited liability partnership.

- (i) Lawyers seeking to organize or practice by means of a professional corporation, limited liability company or limited liability partnership shall obtain applications to do so and instructions for preparing and submitting these applications from the State Board of Law Examiners. Applications shall be upon a form prescribed by the State Board of Law Examiners. Two copies of the application for a certificate of registration shall be delivered to the State Board of Law Examiners, accompanied by a registration fee of two hundred dollars (\$200.00), plus ten dollars (\$10.00) for each officer, director, shareholder, member, partner, other equity owner or lawyer employee licensed to practice law in Indiana of the professional corporation, limited liability company or limited liability partnership, two copies of a certification of the Clerk of the Supreme Court and Court of Appeals of Indiana that each officer, director, shareholder, member, partner, other equity owner or lawyer employee who will practice law in Indiana holds an unlimited license to practice law in Indiana, and two copies of a certification of the Indiana Disciplinary Commission that each officer, director, shareholder, member, partner, other equity owner or lawyer employee licensed to practice in Indiana has no disciplinary complaints pending against him or her and if he or she does, what the nature of each such complaint is. Applications must be accompanied by four copies of the Articles of Incorporation, Articles of Organization or Registration of the professional corporation, limited liability company or limited liability partnership with appropriate fees for the Secretary of State. All forms are to be filed with the State Board of Law Examiners.

Upon receipt of such application form and fees, the State Board of Law Examiners shall make an investigation of the professional corporation, limited liability company or limited liability

partnership in regard to finding that all officers, directors, shareholders, members, partners, other equity owners, managers of lawyer employees licensed to practice law in Indiana are each duly licensed to practice law in Indiana and that all hereinabove outlined elements of this Rule have been fully complied with, and the Clerk of the Supreme Court and Court of Appeals shall likewise certify this fact. The Executive Secretary of the Indiana Disciplinary Commission shall certify whether a disciplinary action is pending against any of the officers, directors, shareholders, members, partners, other equity owners, managers or lawyer employees licensed to practice in Indiana. If it appears that no such disciplinary action is pending and that all officers, directors, shareholders, members, partners, other equity owners, managers of lawyer employees required to be are duly licensed to practice law in Indiana are, and that all hereinabove outlined elements of this Rule have been fully complied with, the Board shall issue a certificate of registration which will remain effective until January 1st of the year following the date of such registration.

Upon written application of the holder, upon a form prescribed by the State Board of Law Examiners, accompanied by a fee of fifty dollars (\$50.00), the Executive Director of the Board shall annually renew the certificate of registration, if the Board finds that the professional corporation, limited liability company or limited liability partnership has complied with the provisions of the statute under which it was formed and this Rule. Such application for renewal shall be filed each year on or before November 30th. Within ten (10) days after any change in the officers, directors, shareholders, members, partners, other equity owners or lawyer employees licensed to practice in Indiana, a written listing setting forth the names and addresses of each shall be filed with the State Board of Law Examiners with a fee of ten dollars (\$10.00) for each new person listed.

Copies of any amendments to the Articles of Incorporation, Articles of Organization or Registration of the professional corporation, limited liability company or limited liability partnership thereafter filed with the Secretary of State's office shall also be filed with the State Board of Law Examiners.

Adopted Nov. 24, 1976, effective Jan. 1, 1976; amended effective Aug. 31, 1976; amended effective Dec. 4, 1980; amended Nov. 16, 1984, effective Jan. 1, 1985; amended Oct. 15, 1986, effective Jan. 1, 1987; amended effective Sept. 13, 1991. Amended Nov. 25, 1997, effective Jan. 1, 1998.

Amended Nov. 25, 1997, effective Jan. 1, 1998.

Rule 28. [vacated January 1, 2003]

Rule 29. Mandatory Continuing Legal Education

SECTION 1. PURPOSE.

The purpose of this Rule is to establish minimal continuing legal education requirements for each attorney admitted to the Bar of the State of Indiana and each non-attorney judge.

SECTION 2. DEFINITIONS.

As used in this Rule:

- (a) *Attorney* shall mean a person who has been admitted to practice law in the State of Indiana and whose name appears in the files of the Board of Law Examiners as provided under Admission and Discipline Rule 4.
- (b) *Bar* shall mean the Indiana Bar and includes those persons who are Attorneys under subsection (a) above.
- (c) *Business Day* shall mean Monday, Tuesday, Wednesday, Thursday and Friday of each week but shall not include Federal or Indiana state holidays.
- (d) *Clerk* shall mean Clerk of the Indiana Supreme Court, Court of Appeals and Tax Court.

- (e) *Commission* shall mean the Indiana Commission For Continuing Legal Education created by Section 4 of this Rule.
- (f) *Commissioner* shall mean a person who is a member of the Commission.
- (g) *Educational Period* shall mean a three-year period during which an Attorney or Judge must complete thirty-six (36) hours of approved continuing legal education activity. Educational Periods shall be sequential, in that once an Attorney's particular three-year period terminates, a new three-year period and thirty-six hour minimum shall commence.
- (h) *Judge* shall mean a regularly sitting Judge in Indiana, including non- attorney Judges.
- (i) *Non Legal Subject Matter Courses* shall mean those courses that enhance proficiency of a lawyer's area of practice.
- (j) *Supreme Court* shall mean the Supreme Court of the State of Indiana.
- (k) *Year* shall mean calendar year unless otherwise specified in this Rule.
- (l) *Professional Responsibility Credits* shall mean credits for topics that specifically address legal ethics or professional responsibility.
- (m) *Distance Education* shall mean instructional delivery that does not constrain the student to be physically present in the same location as the instructor and does not require an attendant at the learning site to monitor attendance.

SECTION 3. EDUCATION REQUIREMENTS.

- (a) Every Attorney and every Judge of a city, town or Marion County small claims court, who is not licensed as an Attorney, shall complete no less than six (6) hours of approved continuing legal education each year and shall complete no less than thirty-six (36) hours of approved continuing legal education each Educational Period. At least three (3) hours of approved continuing legal education in professional responsibility shall be included within the hours of continuing legal education required during each three (3) year Educational Period. Such hours may be integrated as part of a substantive program or as a free standing program. All credits for a single educational activity will be applied in one (1) calendar year. No more than twelve (12) hours of the Educational Period requirement shall be filled by Non Legal Subject Matter Courses.
- (b) Attorneys admitted to the Indiana Bar before December 31, 1998, on the basis of successfully passing the Indiana Bar examination, shall have a grace period of three (3) years commencing on January 1 of the year of admission and then shall commence meeting the minimum yearly and Educational Period requirements thereafter. Attorneys admitted after December 31, 1998, shall commence meeting the yearly and Educational Period requirements starting on January 1 after the year of their admission by completing programs designated by the Commission as appropriate for new lawyers.
For attorneys admitted after December 31, 1998, at least six (6) of the thirty-six (36) Educational Period Requirements shall be satisfied by attending an Applied Professionalism Program for Newly Admitted attorneys which has been accredited by the Commission.
- (c) Attorneys admitted on foreign license or Attorneys who terminate their inactive status shall have no grace period. Their first three year Educational Period shall commence on January 1 of the year of admission or termination of inactive status.
- (d) For Judges of city, town and Marion County small claims courts, who are not Attorneys, the first three year Educational Period shall commence on January 1 of the first full calendar year in office.

A Judge who fails to comply with the educational requirements of this rule shall be subject to suspension from office and to all sanctions under Section 10. A Judge so suspended shall be automatically reinstated upon compliance with Section 10(b) "Reinstatement Procedures". The Commission shall issue a statement reflecting reinstatement which shall also be sent to the Clerk to show on the Roll of Attorneys that the Judge is in good standing.

SECTION 4. COMMISSION FOR CONTINUING LEGAL EDUCATION.

- (a) *Creation of the Commission.* A commission to be known as the Indiana Commission For Continuing Legal Education is hereby created and shall have the powers and duties hereinafter set forth. The Commission shall consist of eleven (11) Commissioners.
- (b) *Appointment of Commissioners and Executive Director.* All Commissioners and the Executive Director shall be appointed by the Supreme Court.

- (c) *Diversity of Commissioners.* It is generally desirable that the Commissioners be selected from various geographic areas and types of practice in order to reflect the diversity of the Bar and consideration should be given to the appointment of one (1) non-lawyer public member. The three (3) geographic divisions used for selecting judges for the Indiana Court of Appeals in the First, Second and Third Districts may be used as a model for achieving geographic diversity.
- (d) *Terms of Commissioners.* Commissioners shall be appointed for five (5) year terms. All terms shall commence on January 1 and end on December 31. Any Commissioner who has served for all or part of two (2) consecutive terms shall not be reappointed to the Commission for at least three (3) consecutive years.

SECTION 5. ORGANIZATION OF THE COMMISSION.

- (a) *Election of Officers.* At the first meeting of the Commission after each October 1, the Commissioners shall elect from the membership of the Commission a Chair who shall preside at all meetings, a Vice Chair who shall preside in the absence of the Chair, a Secretary who shall be responsible for giving notices and keeping the minutes of the meetings of the Commission and a Treasurer who shall be responsible for keeping the records of account of the Commission.
- (b) *Meetings.* The Commission shall meet at least twice each year at times and places designated by the Chair. The Chair, the Executive Committee or any six (6) Commissioners may call special meetings of the Commission.
- (c) *Notices.* The Secretary shall send notice of each meeting of the Commission, stating the purposes of the meeting, to all Commissioners at least five (5) business days before the meeting. Commissioners may waive notice of a meeting by attending the meeting or by delivering a written waiver to the Secretary either before or after the meeting.
- (d) *Quorum.* Six (6) Commissioners shall constitute a quorum for the transaction of business. The Commission shall act by a majority of the Commissioners constituting the quorum. Commissioners may participate in meetings of the Commission and committees thereof by telephone or other similar device.
- (e) *Vacancies.* Any vacancy on the Commission shall be filled as soon as practical and the new Commissioner so appointed shall serve out the unexpired term of the Commissioner being replaced.
- (f) *Executive Committee.* The officers of the Commission described in subsection (a) of this Section shall comprise the Executive Committee which shall have the power to conduct all necessary business of the Commission that may arise between meetings of the full Commission. Three (3) officers of the Commission shall constitute a quorum of the Executive Committee, and the Executive Committee shall act by a vote of a majority of the officers constituting the quorum. All action taken by the Executive Committee shall be reported to the full Commission at its next meeting.
- (g) *Other Committees.* The Commission may appoint such other committees having such powers and duties as the Commission may determine from time to time.

SECTION 6. POWERS AND DUTIES OF THE COMMISSION AND EXECUTIVE DIRECTOR.

- (a) In addition to the powers and duties set forth in this Rule, the Commission shall have the power and duty to:
 - 1. Approve all or portions of individual educational activities which satisfy the legal education requirements of this Rule.
 - 2. Approve sponsors who meet the Requirements of Section 4 of the Commission's Guidelines and whose educational activities satisfy the legal education requirements of this Rule. The Judicial Conference and all seminars conducted by the Judicial Center shall be approved for credit .
 - 3. Determine the number of credit hours allowed for each educational activity.
 - 4. Establish an office to provide administrative and financial record-keeping support of the Commission and to employ such persons, sponsors, or providers as the Commission may in its discretion determine to be necessary to assist in administering matters solely of a ministerial nature under this Rule.
 - 5. Review this Rule and Commission Guidelines from time to time and make recommendations to the Supreme Court for changes.

6. Upon approval of the Supreme Court publish proposed guidelines and procedures through West Publishing Company and Res Gestae and file the proposed guidelines and procedures with the Clerk.
 7. Provide quarterly financial reports and an annual report of the Commission activity to the Chief Justice of the Supreme Court. A proposed budget for the coming fiscal year (July 1-June 30) shall be submitted to the Chief Justice no later than April 1 of each year.
 8. Do all other things necessary and proper to carry out its powers and duties under this Rule.
 9. Perform all other duties as set forth in Indiana Admission and Discipline Rule 30 and The Indiana Alternative Dispute Resolution Rules.
- (b) In addition to the powers and duties set forth in this Rule, the Executive Director shall have the power and the duty to:
1. Administer the Commission's work.
 2. Appoint, with the approval of the Commission, such staff as may be necessary to assist the Commission to carry out its powers and duties under this Rule.
 3. Supervise and direct the work of the Commission's staff.
 4. Supervise the maintenance of the Commission's records.
 5. Enforce the collection of fees attorneys, mediators and independent certifying organizations must pay pursuant to this Rule, Admission and Discipline Rule 30 and that Indiana Alternative Dispute Resolution Rules.
 6. Enforce the continuing legal education requirements of judges and lawyers under this Rule.
 7. Assist the Commission in developing guidelines.
 8. Perform such other duties as may be assigned by the Commission in the furtherance of its responsibilities hereunder.

SECTION 7. SOURCES AND USES OF FUNDS.

- (a) Funding for the Commission shall be provided by a fee charged to each attorney in good standing upon the roll of attorneys in the Office of the Clerk, and every Judge. On or before August 1 of each year, the Clerk shall mail to each such person a notice that the education fee must be paid or an exemption affidavit filed with the Clerk on or before the first day of October. The yearly fee of fifteen dollars (\$15.00) will be paid with and in addition to the annual registration fee on or before October 1 of such year. Both may be paid by single check. The Clerk will mail a statement for the payment of said fee to each such person at the same time a statement for the annual registration fee is mailed. Failure to pay the education fee on or before October 1, will result in an imposition of a delinquency fee of fifteen dollars (\$15.00).
- All monies collected by the Clerk shall be deposited in a special account designated as Clerk of Courts--Annual Fees. Disbursements from the Continuing Legal Education Fund shall first be approved by the Executive Committee and then shall be approved by the Chief Justice if the amount is over five hundred dollars (\$500.00) and by the Supreme Court Administrator if the amount is five hundred dollars (\$500.00) or less. Salaries shall be funded by payments made to the Supreme Court.
- (b) Any Attorney or Attorney-Judge who fails to pay the education fee or file an affidavit under Ind. Admission Rule 23, Sec. 21(b) shall be automatically suspended from the practice of law in this State and shall be subject to sanctions for the unauthorized practice of law in this State. Any Non-Attorney Judge who fails to pay the education fee or notify the Clerk by affidavit of resignation, shall be automatically suspended from judicial office. An Attorney's privilege to practice law may be reinstated or a Judge may resume office upon written application, payment of unpaid education fees and payment of the delinquency fee as set out in subsection (a) of this section. If an Attorney or Judge is suspended by order of the Supreme Court, the additional fee for reinstatement set out in Section 10 of this Rule will be imposed.
- (c) All salaries to be paid shall be specifically ordered and approved by the Supreme Court. Commissioners shall be paid one hundred dollars (\$100) for each meeting of the Commission they attend and be reimbursed for expenses in accordance with guidelines established by the State of Indiana.

SECTION 8. EXEMPTIONS AND OTHER RELIEF FROM THE RULE.

- (a) An Attorney or Judge shall be exempted from the educational requirements of the Rule for such period of time as shall be deemed reasonable by the Commission upon the filing of a verified petition with the

Commission and a finding by the Commission that special circumstances unique to the petitioning Attorney or Judge have created undue hardship. Subsequent exemptions may be granted.

- (b) The educational requirements imposed on judges and full-time magistrates of the United States Supreme Court, Courts of Appeal, District Courts and Bankruptcy Courts are deemed to satisfy the requirements of this Rule. Thus such judges and magistrates shall be exempt from this Rule.
- (c) An Attorney or Judge who is physically impaired shall be entitled to establish an alternative method of completing the educational requirements of this Rule upon the filing of a verified petition with the Commission and a finding by the Commission that the alternative method proposed is necessary and consistent with the educational intent of this Rule. Any petition filed under this subsection shall contain a description of the physical impairment, a statement from a physician as to the nature and duration of the impairment, a waiver of any privileged information as to the impairment and a detailed proposal for an alternative educational method.
- (d) An Attorney shall be exempt from the educational and reporting requirements of this Rule if the Attorney has filed an affidavit of inactivity or a retirement affidavit under Section 21(b) of Rule 23 of the Supreme Court. An Attorney who has been inactive for less than a year, and desires to resume active status, shall complete any balance of his or her yearly or Educational Period requirements as of the date of inactive status.
- (e) An Attorney or Judge who believes that he or she will be unable to make timely compliance with the educational requirements imposed by this Rule may seek relief from a specific compliance date by filing a verified petition with the Commission. The petition shall set forth reasons from which the Commission can determine whether to extend such compliance date. A petition seeking such an extension of time must be filed as much in advance of the applicable compliance date as the reasons which form the basis of the request afford. The Commission, upon receipt and consideration of such petition, shall decide if sufficient reasons exist, and may grant an extension for such period of time as shall be deemed reasonable by the Commission. In no event shall such an extension be granted beyond the time when the next compliance date, as required by the Rule, occurs.

SECTION 9. ANNUAL REPORTING TO ATTORNEYS AND JUDGES.

- (a) On or before October 1 of each year, the Commission shall mail to each Attorney or Judge, a statement showing the approved educational activities which the Attorney or Judge is credited on the records of the Commission with having attended during the current year and the current Educational Period. This statement will be sent to the address for the Attorney or Judge listed on the Roll of Attorneys maintained by the Clerk. An Attorney or Judge shall at all times keep his or her address current with the Roll of Attorneys. If the Attorney or Judge has completed the minimum hours for the year or Educational Period, the statement will so reflect and inform the Attorney or Judge that he or she is currently in compliance with the education requirements of the Rule. It shall not be a defense to noncompliance that an Attorney or Judge has not received an annual statement. Additional statements will be provided to an Attorney or Judge upon written request and a five dollar (\$5.00) fee made payable to the Continuing Legal Education Fund.

If the statement shows the Attorney or Judge is deficient in educational hours, but the Attorney or Judge believes he or she is in compliance for the year or Educational Period the Attorney or Judge shall file a letter of explanation, a Sponsor certification of course attendance, a personal affidavit of attendance, and an application for course accreditation. The documents required by this subsection shall be filed by December 31 of the year or Educational Period in question unless an extension of time to file the same has been granted by the Commission. When an Attorney or Judge has resolved the above discrepancies, the Commission shall issue a statement showing that the Attorney or Judge is in compliance with the Rule for the year or Educational Period. In the event credit is not granted, the Attorney or Judge shall have thirty (30) days after written notification of that fact to comply with the educational requirements. Failure to do so will result in referral to the Supreme Court for suspension.

- (b) If the statement incorrectly reflects that the Attorney or Judge has completed the minimum hours for the year or the Educational Period, then it shall be the duty of the Attorney or Judge to notify the Commission and to complete the educational requirements mandated by this Rule.

SECTION 10. SANCTIONS AND REINSTATEMENTS.

- (a) *Sanctions.* On January 1, a \$150.00 late fee accrues against each Attorney or Judge who has not met his/her yearly or Educational Period requirements for the period ending December 31st of the previous year. On February 1 of each year the Commission shall mail a notice assessing a \$150.00 late fee to those Attorneys or Judges who are shown as not having completed the yearly or Educational Period requirements. The Commission will consider the Attorney or Judge delinquent for CLE until both certification of attendance at a CLE program and payment of the late fee are received. Late fees and surcharges are to be deposited by the Commission immediately upon receipt. If the delinquent Attorney or Judge has not fulfilled the yearly or educational period requirements at the time the Court issues an order suspending that Attorney or Judge, the delinquency fee is forfeited. If the attorney or judge is reinstated to the practice of law pursuant to the provisions of Admission and Discipline Rule 29(10) within one year of suspension, any forfeited late fee shall be credited toward the reinstatement fee. A \$100.00 surcharge will be added to the late fee for each consecutive year for which an Attorney or Judge fails to timely comply with CLE requirements.

On April 1 of each year, a list of those Attorneys or Judges still failing to complete the yearly or Educational Period requirements will be submitted to the Supreme Court for immediate suspension from practice of law. These Attorneys or Judges will suffer the suspension of their license to practice law and all related penalties until they are reinstated.

- (b) *Reinstatement Procedures.* An Attorney or Judge suspended shall be automatically reinstated upon petition to the Commission and payment of a \$200.00 reinstatement fee in addition to any applicable surcharge. The petition must demonstrate the petitioner's compliance according to the following reinstatement schedule:
- (i) for a suspension of one year or less the petitioner must, between the date of suspension and the date of the petition for reinstatement:
 - (a) complete the hours required to satisfy the deficiency which resulted in the suspension; and
 - (b) complete 6 additional hours of approved continuing legal education in a separate course or courses;
 - (ii) for a suspension of more than one year a petitioner must, between the date of suspension and the date of the petition for reinstatement:
 - (a) complete the hours required to satisfy the deficiency which resulted in the suspension;
 - (b) complete 36 hours of approved continuing legal education, 12 hours of which must have been completed within the last twelve month period prior to the date of the petition; and
 - (c) begin a new Educational Period as of January 1st of the year of reinstatement pursuant to Section 3a of this Rule.

The Commission shall issue a statement reflecting reinstatement which shall also be sent to the Clerk to show on the roll of attorneys that the Attorney or Judge is in good standing. An Attorney suspended by the Supreme Court who continues to practice law shall be subject to the sanctions for the unauthorized practice of law.

Extensions to provide course attendance certifications for courses which were timely taken may be granted for good cause shown; extensions of time to complete educational requirements are not permitted except under *Section 8* of this Rule. Providing or procuring of false certifications of attendance at educational courses shall be subject to appropriate discipline under the Admission and Discipline Rules.

SECTION 11. DISPUTES REGARDING COMMISSION RECORDS.

Any Attorney or Judge who disagrees with the records of the Commission in regard to the credits recorded for the Attorney or Judge during the current year or Educational Period and is unable to resolve the disagreement pursuant to Section 9 of this Rule, may petition the Commission for a determination as to the credits to which the Attorney or Judge is entitled. Petitions pursuant to this Section shall be considered by

the Commission at its next regular or special meeting, provided that the petition is received by the Commission at least ten (10) business days before such meeting. The Attorney or Judge filing the petition shall have the right to attend the Commission meeting at which the petition is considered and to present relevant evidence and arguments to the Commission. The rules of pleading and practice in civil cases shall not apply, and the proceedings shall be informal. The determination of the Commission shall be final as to the number of credits for the Attorney or Judge and shall be appealable directly to the Supreme Court. In the event of a good faith dispute which is not resolved pursuant to Section 9, the educational and reporting deadlines of this Rule shall be extended until thirty (30) days after the full Commission has ruled on the disputed issue, or if an appeal is taken, until thirty (30) days after the Supreme Court has ruled on the disputed issue.

SECTION 12. PETITIONS.

Any petition filed with the Commission pursuant to this Rule shall be in writing and shall be signed and verified by the Attorney or Judge seeking relief. The petition shall be sent by registered or certified mail to the attention of the Executive Director at the Commission's offices at the address shown on the most recent statements sent pursuant to Section 9 of this Rule.

SECTION 13. CONFIDENTIALITY.

Unless otherwise directed by the Supreme Court or by another court having jurisdiction, the files, records and proceedings of the Commission, as they may relate to or arise out of an Attorney, Judge, Mediator or Sponsor attempting to satisfy the continuing legal educational requirements of this Rule, or the requirements of the Indiana Alternative Dispute Resolution Rules shall be confidential and shall not be disclosed except in furtherance of the duties of the Commission or upon the request of the Attorney, Judge, Mediator or Sponsor affected.

SECTION 14. CONFLICT OF INTEREST.

A member, agent or administrator of the Commission shall abstain from participating in any decision involving a sponsor or provider of educational services of which he or she is an officer. A member, agent or administrator of the Commission shall not be an employee of an entity principally engaged in sponsoring or providing continuing legal education services.

Adopted effective October 1, 1986; amended effective April 16, 1987; amended effective Oct. 15, 1987; amended effective June 8, 1988; amended effective July 28, 1989; amended Nov. 30, 1989, effective Jan. 1, 1990; amended effective Jan. 16, 1990; amended effective May 11, 1990; amended effective Jan. 1, 1991; amended effective May 23, 1991; amended effective Sept. 21, 1993; amended effective Sept. 22, 1993; amended effective Feb. 1, 1996.

Amended Dec. 23, 1996, effective March 1, 1997; amended Nov. 25, 1997, effective Jan. 1, 1998; amended effective Jan. 23, 1998; amended effective Feb. 4, 2000.

Mandatory Continuing Legal Education Guidelines

SECTION 1. AUTHORITY AND PUBLICATION OF GUIDELINES.

These guidelines have been adopted by the Court under Section 6(f) of the Rule in furtherance of the efficient discharge of the Commission's duties.

The Commission shall:

- (a) file a copy of these guidelines with the Clerk;
- (b) cause these guidelines to be published from time to time as revised in a pamphlet or brochure along with the full text of the Rule and any other materials deemed useful by the Commission in assisting Attorneys, Judges and Sponsors to understand and comply with the Rule;
- (c) cause these guidelines and the full text of the Rule to be sent to the West Publishing Company of St. Paul, Minnesota, with a request that they be published in the Northeast Reporter; and
- (d) cause these guidelines and the full text of the Rule to be sent to the Editors of Res Gestae with a request that they be published.

SECTION 2. DEFINITIONS.

All of the definitions found in Section 2 of the Rule are applicable in these guidelines. In addition, as used in these guidelines:

- (a) Approved Continuing Legal Education shall mean any course, approved by the Commission under Section 3 of these Guidelines, or conducted by an approved sponsor which meets the requirements of Section 3 of these Guidelines.
- (b) Approved Sponsor shall mean any person approved under Section 4 of these Guidelines.
- (c) Course shall mean any educational seminar, institute or program which is designed to contribute to the continuing legal education of Attorneys and Judges.
- (d) Enroll shall mean registration for and attendance at a course.
- (e) Person shall mean an individual, partnership, corporation or any other organization.
- (f) Rule shall mean Admission and Discipline Rule 29 on Mandatory Continuing Legal Education.
- (g) Sponsor shall mean a person who conducts or presents a course.

SECTION 3. ACCREDITATION POLICIES.

- (a) *Approval of Courses.* The Commission shall approve the course if it determines that the course will make a significant contribution to the professional competency of Attorneys or Judges who enroll. In determining if a course meets this standard the Commission shall consider whether:
 - (i) the course has substantial legal content.
 - (ii) the course deals with matters related directly to the practice of law or the professional responsibility of Attorneys or Judges.
 - (iii) each faculty member who has teaching responsibility in the course is qualified by academic work or practical experience to teach the assigned subject.
 - (iv) the physical setting for the course is suitable, including the availability of a writing surface and accessibility to persons with disabilities.
 - (v) high quality written materials including notes and outlines are available at or prior to the time the course is offered to all Attorneys or Judges who enroll.
 - (vi) the course is of sufficient length to provide a substantial educational experience. Courses of less than one (1) hour will be reviewed carefully to determine if they furnish a substantial educational experience.
 - (vii) there are live presentations; or there is a licensed Indiana attorney, whose function shall be to certify attendance to accompany the replaying of tapes.
 - (viii) the applicant has sufficiently identified those portions of a seminar that should be accredited. It shall be the duty of an applicant to apply separately for accreditation of the legal portions of a seminar, where the substance of a seminar is not entirely legal. The Commission may deny accreditation for an entire program where separate application is not made and where a significant portion of the program is not continuing legal education.
 - (ix) the course is designed for and targeted to Attorneys or Judges.
- (b) *Approval of Other Educational Activities.*
 - (i) Credit may be given for the following legal subject matter courses:
 - (a) Law School Courses. An Attorney or Judge who attends a regularly conducted class at a law school approved by the American Bar Association. The number of credits may not exceed 24 hours for a single law school activity.
 - (b) Bar Review Courses. An Attorney or Judge who completes a bar review course may apply for continuing legal education credit. The number of credits may not exceed 24 hours for the course.
 - (c) Commission-Accredited Basic Mediation Training Course. An Attorney or Judge who completes a basic mediation training course approved by the Commission for mediation training shall receive 24 hours.
 - (d) Court Administration Courses. Courses directed at improving docket management and court administration shall be approved.

- (e) Ethics Concentrated Law Firm Management Courses. An Attorney or Judge who attends a law firm management course with a concentration on: Trust accounting, ethical client contact, and ethical use of staff and resources may apply for credit. Any portion of the course dealing with marketing of services, profit enhancement, and stress management will be denied credit.
 - (f) Teaching Approved Courses. An Attorney or Judge who participates as a teacher, lecturer, panelist or author in an approved continuing legal education course will receive credit for:
 - (1) Four (4) hours of approved continuing legal education for every hour spent in presentation.
 - (2) One (1) hour of continuing legal education credit for every four (4) hours of preparation time (up to a maximum of six (6) hours of credit) for a contributing author who does not make a presentation relating to the materials prepared.
 - (3) One (1) hour of approved continuing legal education for every hour the Attorney or Judge spends in attendance at sessions of a course other than those in which the Attorney or Judge participates as a teacher, lecturer or panel member.
 - (4) Attorneys or Judges will not receive credit for acting as a speaker, lecturer or panelist on a program directed to non-attorneys.
- (ii) Limited credit may be given for non-legal subject matter courses. The Commission promotes the competency of Attorneys in the practice of law. The Commission acknowledges there are some Non Legal Subject Matter Courses which enhance an Attorney's competency in his or her individual practice. An Attorney or Judge who make an application may receive a maximum of twelve (12) hours per Educational Period from Non Legal Subject Matter Courses. An Attorney must demonstrate that the Non Legal Subject Matter Course will enhance that Attorney's individual practice. A Sponsor may not apply for or receive general accreditation of a Non Legal Subject Matter Course. The following is a non-exclusive list of courses that may be accredited under this section:
- (a) Law firm management courses. An Attorney may apply for accreditation of a law office management course that does not meet the criteria of (f) Ethics Concentrated Law Firm Management courses (above). To be accredited, the course must deal with law firm management as opposed to office management in general. Further, the course must be directed to Attorneys or law office administrators. Any portions of the course dealing mainly with profit enhancement or marketing of services will be denied credit.
 - (b) Medicine. Orthopaedics or Anatomy for Lawyers.
 - (c) Accounting for Lawyers.
 - (d) Teaching Administration Skills for Law School Teachers.
- (iii) Professional Responsibility Credit shall be given when a topic has professional responsibility or ethics as its main focus, and the course has at least one-half (1/2) hour of professional responsibility content.
- (a) An Approved Sponsor must separately designate Professional Responsibility Credits when certifying attendance to the Commission.
 - (b) A Non-Approved Sponsor must separately request Professional Responsibility Credits on an application provided by the Commission.
- (iv) Approved In-house education. In-house programs include those primarily designed for the exclusive benefit of attorneys employed by a private organization or law firm. In-house programs also include those programs presented only to those attorneys and/or their clients, even if the program was not designed for those attorneys. Attorneys within related companies are considered to be employed by the same organization or law firm for purposes of this rule. In-house education programs may become approved where the education is provided by a judge, attorney or sponsor of legal education who is not a member, employee or acting of counsel of the participating organization or law firm. In-house CLE is subject to the following limitations and requirements:

- (a) Limited credit may be given for courses taught in-house. Non-governmental or non-academic attorneys may report up to three hours per three-year educational period for in-house programs that have been accredited by the Commission. Governmental or academic attorney employees may receive unlimited CLE for these courses sponsored by their employers for the exclusive benefit of their attorney employees.
- (b) To be accredited, the attorney or sponsor must apply for accreditation at least 30 days before the course is presented, using an Application for Accreditation. Additionally, the sponsor or attorney must demonstrate the facts set forth in paragraph vi below.
- (v) Distance education courses. Limited credit may be given for courses taken through distance education methods. An attorney or judge may receive up to six (6) hours of CLE through interactive distance education during an educational period. To be accredited, the attorney or sponsor must apply for accreditation at least 30 days before the course is presented using an Application for Accreditation. Additionally, the sponsor or attorney must demonstrate the facts set forth in paragraph vi below.
- (vi) Accreditation of in-house and distance education courses. The sponsor or attorney must demonstrate that:
 - a. the course is designed for and targeted to attorneys or judges;
 - b. continuing attendance is monitored and evidence of continuing attendance and/or participation is provided by the sponsor to the Commission in conformance with such guidelines as the Commission may develop;
 - c. the sponsor will provide a certificate of continuing attendance to the Commission;
 - d. in content and style the program meets standards of educational quality as determined by the Commission;
 - e. in the case of distance education courses, meaningful technical assistance will be provided at times and in ways reasonable to the attorney-attendee;
 - f. the course has substantial legal content (non legal subject credit is not available through in-house programs);
 - g. the course deals with matters related directly to the practice of law or the professional responsibility of Attorneys or Judges;
 - h. each faculty member who has teaching responsibility in the course is qualified by academic work or practical experience to teach the assigned subject;
 - i. high quality written materials are available either through paper format or electronic format to accompany the instruction either at or prior to the time the course is offered;
 - j. in the case of distance education courses, the program is not text-based;
 - k. in the case of distance education courses, either audio or video or both are provided; and,
 - l. the sponsor will allow the Commission and its Executive Director to audit the course for regulation purposes.

(vii) Credit will be denied for the following activities:

- (a) Legislative, lobbying or other law-making activities.
 - (b) Self-study activities. Courses or activities completed by self-study will be denied credit unless approved under Section 8(c) of this rule.
- (c) *Procedure for Sponsors.* Any Sponsor may apply to the Commission for approval of a course. The application must:
- (i) be submitted to the Commission at least thirty (30) days before the first date on which the course is to be offered;
 - (ii) contain the information required by and be in the form approved by the Commission and available upon request; and
 - (iii) be accompanied by the written course outline and brochure used to furnish information about the course to Attorneys or Judges.
- (d) *Procedure for Attorneys and Judges.* An Attorney or Judge may apply for credit of a non-distance education course or non legal subject course either before or after the date on which it is offered. Application for accreditation of a distance education course or in-house course must be made at least 30 days prior to the Course. The application must:
- (i) contain the information required by and be in the form set forth in the application approved by the Commission and available upon request;
 - (ii) be accompanied by the written course outline and brochure used by the Sponsor to furnish information about the course to Attorneys or Judges; and
 - (iii) be accompanied by an affidavit of the Attorney or Judge attesting that the Attorney or Judge attended the course together with a certification of the course Sponsor as to the Attorney's or Judge's attendance. If the application for course approval is made before attendance, this affidavit and certification requirement shall be fulfilled within thirty (30) days after course attendance.

SECTION 4. APPROVAL OF SPONSORS.

- (a) *Procedure.* A Person may apply to the Commission for approval as a Sponsor of continuing legal education activity. The application submitted to the Commission must contain the information required by and be in the form approved by the Commission and available upon request in the Commission office. A Person becomes an Approved Sponsor when the Commission places a Person's name on the list of Approved Sponsors .
- (b) *Standard for Approval.* The Commission shall approve the Person as a Sponsor if the Commission finds that the Person has conducted and is prepared to conduct on a regular basis programs which, if considered on an individual basis, would satisfy the standards for course approval set out in Section 3(a) of these Guidelines.
- (c) *Review of Approved Sponsors.* The Commission shall periodically audit approved Sponsors. If the Person fails to conduct approvable courses on a regular basis, the Person shall be removed from the Commission's list of Approved Sponsors. In order to remain an Approved Sponsor, a Sponsor must certify to the Commission the name and attorney number of all Indiana Attorneys and Judges who attend any Continuing Legal Education Program.
- (d) *Presumption of Course Accreditation.* Courses presented by an Approved Sponsor are presumed to satisfy the education requirements of Section 3 of the Rule; provided however, courses which do not meet requirements of Section 3(a) of these Guidelines will be denied credit. Approved Sponsors must seek approval of courses of less than one (1) hour duration under Section 3 of these Guidelines.

SECTION 5. PROCEDURE FOR RESOLVING DISPUTES.

Any Person who disagrees with a decision of the Commission and is unable to resolve the disagreement informally, may petition the Commission for a resolution of the dispute. Petitions pursuant to this Section shall be considered by the Commission at its next regular meeting, provided that the petition is received by the Commission at least ten (10) business days before such meeting. The Person filing the petition shall have the right to attend the Commission meeting at which the petition is considered and to present relevant evidence and arguments to the Commission. The rules of pleading and practice in civil cases shall not

apply, and the proceedings shall be informal as directed by the Chair. The determination of the Commission shall be final subject to appeal directly to the Supreme Court.

SECTION 6. CONFIDENTIALITY.

Filings with the Commission shall be confidential. These filings shall not be disclosed except in furtherance of the duties of the Commission or upon the request, by the Attorney, Judge or Sponsor involved, or as directed by the Supreme Court.

SECTION 7. RULES FOR DETERMINING EDUCATION COMPLETED.

(a) *Formula.* The number of hours of continuing legal education completed in any course by an Attorney shall be computed by:

- (i) Determining the total instruction time expressed in minutes;
- (ii) Dividing the total instruction time by sixty (60); and
- (iii) Rounding the quotient up to the nearest one-tenth (1/10).

Stated in an equation the formula is:

$$\frac{\text{Total Instruction Time (in minutes)}}{\text{Sixty (60)}} = \text{Hours completed (rounded up to nearest 1/10)}$$

(b) *Instruction Time Defined.* Instruction time is the amount of time when a course is in session and presentations or other educational activities are in progress. Instruction time does not include time spent on:

- (i) Introductory remarks;
- (ii) Breaks; or
- (iii) Business meetings.

SECTION 8. REPORT OF SPONSOR.

The Sponsor shall, within thirty (30) days after the course is presented, submit to the Commission an alphabetical list including Attorney numbers of all Attorneys admitted in Indiana and Indiana Judges who have attended the course. This list shall be certified by the Sponsor and include the hours to be credited to each Attorney and Judge for attendance and speaking.

If the course is presented by an Approved Sponsor under Section 4 of these Guidelines, the Sponsor shall submit a copy of the outline and brochure by which information about the program was furnished to Attorneys or Judges.

SECTION 9. USE OF THE OFFICIAL LEGEND OF THE COMMISSION.

- (a) Legend of the Commission. The Commission has adopted the official legend set forth in subsection (c) of this Section as a symbol of approval of continuing legal education activity. This legend is the subject of copyright and may not be used in advertisement or publicity for a course unless the Sponsor complies with the requirements of subsection (b) of this Section.
- (b) A Sponsor of approved continuing legal education may use the legend set forth in subsection (c) of this Section if the Sponsor agrees to report hours of credit and submit materials under Section 6 of these Guidelines.
- (c) This legend which may be utilized by Sponsors is:
THIS COURSE HAS BEEN APPROVED BY THE COMMISSION ON CONTINUING LEGAL EDUCATION OF THE STATE OF INDIANA. ATTORNEYS OR JUDGES WHO COMPLETE THIS COURSE SHALL RECEIVE _____ HOURS OF CONTINUING EDUCATION UNDER INDIANA SUPREME COURT ADMISSION AND DISCIPLINE RULE 29 ON MANDATORY CONTINUING LEGAL EDUCATION. THE SPONSOR OF THIS COURSE IS OBLIGATED TO REPORT THE HOURS OF CONTINUING EDUCATION COMPLETED BY AN ATTORNEY OR JUDGE.

Adopted effective October 1, 1986; amended effective April 16, 1987; amended effective June 8, 1988; amended Nov. 30, 1989, effective Jan. 1, 1990; amended May 23, 1991, effective Jan. 1, 1992; amended Dec. 23, 1996, effective March 1, 1997; amended Sep. 30, 2004, effective Jan. 1, 2005; amended October 29, 2004, effective Jan. 1, 2005.

Rule 30. Indiana Certification Review Plan

Section 1. Purpose. The purpose of this rule is to regulate the certification of lawyers as specialists by independent certifying organizations (ICO's) to:

- (a) enhance public access to and promote efficient and economic delivery of appropriate legal services;
- (b) assure that lawyers claiming special competence in a field of law have satisfied uniform criteria appropriate to the field;
- (c) facilitate the education, training and certification of lawyers in limited fields of law;
- (d) facilitate lawyer access to certifying organizations;
- (e) expedite consultation and referral; and
- (f) encourage lawyer self-regulation and organizational diversity in defining and implementing certification of lawyers in limited fields of law.

Section 2. Power of Indiana Commission for Continuing Legal Education (CLE). CLE shall review, approve and monitor organizations (ICO's) which issue certifications of specialization to lawyers practicing in the State of Indiana to assure that such organizations satisfy the standards for qualification set forth in this rule.

Section 3. Authority of CLE. In furtherance of the foregoing powers and subject to the supervision of and, where appropriate, appeal to the Supreme Court of Indiana, CLE shall have authority to:

- (a) approve or conditionally approve appropriate organizations as qualified to certify lawyers as specialists in a particular field or closely related group of fields of law;
- (b) adopt rules and policies reasonably needed to implement this rule and which are not inconsistent with its purposes;
- (c) review and evaluate the programs of ICO's to assure continuing compliance with the purposes of this rule, the rules and policies of CLE, and the qualification standards set forth in Section 4;
- (d) deny, suspend or revoke the approval of an ICO upon CLE's determination that the ICO has failed to comply with the qualification standards or rules and policies of CLE;
- (e) keep appropriate records of those lawyers certified by ICO's approved under this rule;
- (f) cooperate with other organizations, boards and agencies engaged in the field of lawyer certification;
- (g) enlist the assistance of advisory committees to advise CLE; and
- (h) make recommendations to the Indiana Supreme Court concerning:
 - (1) the need for and appointment of a Director and other staff, their remuneration and termination;
 - (2) an annual budget;
 - (3) appropriate fees for applicant organizations, qualified organizations and certified specialists; and
 - (4) any other matter the Indiana Supreme Court requests.

Section 4. Qualification Standards for Independent Certifying Agencies.

- (a) The ICO shall encompass a comprehensive field or closely related group of fields of law so delineated and identified (1) that the field of certification furthers the purpose of the rule; and (2) that lawyers can, through intensive training, education and work concentration, attain extraordinary competence and efficiency in the delivery of legal services within the field or group.
- (b) The ICO shall be a non-profit entity whose objectives and programs foster the purpose of this rule and which is governed by lawyers who, in the judgment of CLE, are experts in the field of certification.
- (c) The ICO shall have a substantial continuing existence and demonstrable administrative capacity to perform the tasks assigned it by this rule and the rules and policies of CLE.

- (d) The ICO shall adopt, publish and enforce open membership and certifications standards and procedures which do not unfairly discriminate against members of the Bar of Indiana individually or collectively.
- (e) The ICO shall provide the following assurance to the continuing satisfaction of CLE with respect to its certified members:
 - (1) that members have extraordinary competence and efficiency in the field of certification that is
 - (i) comprehensive;
 - (ii) objectively demonstrated;
 - (iii) peer recognized; and
 - (iv) reevaluated at appropriate intervals;
 - (2) that members actively and effectively pursue the field of certification as demonstrated by continuing education and substantial involvement; and
- (f) The ICO shall cooperate at all times with CLE and perform such tasks and duties as CLE may require to implement, enforce and assure compliance with and effective administration of this rule.

Section 5. Qualification Standards for Certification.

- (a) To be recognized as certified in a field of law in the State of Indiana, the lawyer must be duly admitted to the bar of this state, in active status, and in good standing, throughout the period for which the certification is granted.
- (b) The lawyer must be certified by an ICO approved by CLE, and must be in full compliance with the Indiana Bar Certification Review Plan, the rules and policies of the ICO and the rules and policies of CLE.

Section 6. Privileges Conferred and Limitations Imposed.

- (a) A lawyer who is certified under this rule may communicate the fact that the lawyer is certified by the ICO as a specialist in the area of law involved. The lawyer shall not represent, either expressly or impliedly, that the lawyer's certification has been individually recognized by the Indiana Supreme Court or CLE, or by an entity other than the ICO.
- (b) Certification in one or more fields of law, shall not limit a lawyer's right to practice in other fields of law.
- (c) Absence of certification in a field of law shall not limit the right of a lawyer to practice in that field of law. Participation in the Indiana Bar Certification Review Plan shall be on a voluntary basis.
- (d) The number of certifications which a lawyer may hold shall be limited only by the practical limits of the qualification standards imposed by this rule and the rules and policies of the ICO.
- (e) An ICO shall not be precluded from issuing certificates in more than one area of certification but in such event, the ICO's qualifications shall be judged and determined separately as to each such area of certification. To the extent consistent with the purpose of the Indiana Bar Certification Review Plan, any number of ICO's may be approved to issue certifications in the same or overlapping fields or groups of closely related fields of law.

Section 7. Fees. To defray expenses of the Indiana Bar Certification Review program, the Indiana Supreme Court may establish and collect reasonable and periodic fees from the ICO's and from applicants and lawyers certified under the Indiana Bar Certification Review program.

Section 8. Appeal. CLE action or inaction may be appealed as abuse of authority under the Rules of Procedure applicable to original actions in the Indiana Supreme Court.

Adopted Dec. 5, 1994, effective Feb. 1, 1995.

Rule 31. Judges and Lawyers Assistance Program

Section 1. Establishment. The Judges and Lawyers Assistance Committee is created and shall have the powers and duties set out below. The Committee shall be composed of Committee members, an Executive Director, and such other persons as shall from time to time be approved by the Supreme Court and who are necessary to carry out the Committee's work.

Section 2. Purpose. The purpose of the Judges and Lawyers Assistance Program is assisting impaired members in recovery; educating the bench and bar; and reducing the potential harm caused by impairment to the individual, the public, the profession, and the legal system. Through the Judges and Lawyers Assistance Program, the Committee will provide assistance to judges, lawyers and law students who suffer from physical or mental disabilities that result from disease, chemical dependency, mental health problems or age that impair their ability to practice; and will support other programs designed to increase awareness about the problems of impairment among lawyers and judges.

Section 3. Committee Members.

- (a) The Committee shall consist of fifteen (15) Committee members, all of whom shall be appointed by the Supreme Court. Members shall have experience with the problems of chemical dependency and/or mental health problems. Seven (7) members shall be practicing lawyers; five (5) shall be judges; one (1) shall be a law student enrolled in an Indiana law school at the time of appointment; two (2) members may be filled by judges, lawyers, and/or law student(s). A reasonable effort shall be made to provide geographical representation of the State.
- (b) Members shall be appointed for three-year terms, All terms shall commence on January 1 and end on December 31. Any member who has served two (2) consecutive terms exclusive of filling out an unexpired term, shall not be reappointed to the Committee for at least three (3) consecutive years. Any vacancy on the Committee shall be filled as soon as practicable and the new member so appointed shall serve the unexpired term of the member being replaced. Any member may be removed by the Supreme Court for a good cause.
- (c) Election of Officers. At the first meeting of the Committee after each January 1 and subject to approval by the Supreme Court, the members shall elect from the membership a Chair who shall preside at all meetings, a Vice-Chair who shall preside in the absence of the Chair, a Secretary who shall be responsible for giving notices and keeping the Committee's minutes, and a Treasurer who shall be responsible for keeping the Committee's records of account.
- (d) Executive Committee. The Officers shall comprise the Executive Committee, which shall have the power to conduct all necessary business that may arise between meetings of the full Committee. Three (3) Officers shall constitute a quorum. The Executive Committee shall act by a vote of a majority of the Officers. All action taken by the Executive Committee shall be reported to the full Committee at its next meeting.
- (e) Meetings. The Committee shall meet at least twice each year at times and places designated by the Chair. The Chair, the Executive Committee or any six Committee members may call special meetings of the Committee.
- (f) Notices. The Secretary shall send notice of each Committee meeting, which states the meeting's purpose, to all members at least five (5) business days before the meeting.
- (g) Quorum. Six (6) members shall constitute a quorum for the transaction of business. The Committee shall act by majority of the members constituting the quorum. Members may participate in meetings by telephone or other similar device.

Section 4. Powers and Duties of the Committee. In addition to the powers and duties set forth elsewhere in this Rule, the Committee shall have the power and duty to:

- (a) Adopt rules and regulations, to be known as the Judges and Lawyers Assistance Program Guidelines, for the efficient discharge of its powers and duties. The Guidelines shall become effective when approved by the Supreme Court.
- (b) Establish an office to provide administrative and financial record keeping support for the Committee.
- (c) Review this Rule and Guidelines from time to time and make recommendations to the Supreme Court for changes.
- (d) Publish proposed Guidelines and procedures through West Publishing Company and Res Gestae and file them with the Clerk of the Supreme and Appellate Courts.

- (e) Appoint subcommittees having such powers and duties as the Committee may determine are necessary to carry out the Committee's work.
- (f) Provide quarterly financial reports to the Chief Justice.
- (g) Make an annual report of its activities to the Supreme Court, the Disciplinary Commission, and the Indiana State Bar Association each year. The report shall include a statement of income and expenses for the year.
- (h) Recruit and train volunteers, as defined by the Guidelines, to assist the Committee's work with impaired persons.
- (i) Do all other things necessary and proper to carry out its powers and duties under this Rule.

Section 5. Executive Director. With the assistance of the Committee members, the Chief Justice shall hire an Executive Director.

Section 6. Powers and Duties of the Executive Director. In addition to the powers and duties set forth in this Rule or otherwise defined by the Committee or the Supreme Court, the Executive Director shall have the power and duty to:

- (a) Administer the Committee's work.
- (b) Appoint, with approval of the Committee, such staff as may be necessary to assist the Committee to carry out its powers and duties under this Rule.
- (c) Supervise and direct the work of the Committee's staff and volunteers.
- (d) Assist the Committee in developing Guidelines.
- (e) Supervise the maintenance of the Committee's records.
- (f) Assist judges, courts, lawyers, law firms and law schools to identify and intervene with impaired members of the legal profession.
- (g) Do all things necessary and proper to carry out the Executive Director's duties and powers under this Rule.

Section 7. Sources and Uses of Funds.

- (a) Funding for the Committee, shall be provided through a portion of the registration fee charged to each lawyer pursuant to Admission and Discipline Rule 23 § Section 21.
- (b) A budget shall be submitted April 1 of each fiscal year, July 1 through June 30, to the Supreme Court for its review and approval.
- (c) Disbursements shall first be approved by the Executive Committee or its designee and then by the Chief Justice if the amount is over five hundred dollars (\$500.00) and by the Supreme Court Administrator if the amount is five hundred dollars (\$500.00) or less.
- (d) All salaries to be paid shall be specifically ordered and approved by the Supreme Court. Committee members shall not be paid, but will be reimbursed for expenses in accordance with guidelines established by the State of Indiana.

Section 8. Referrals.

- (a) Any judge, lawyer, or law student may contact the Committee seeking assistance.
- (b) Any person may report to the Committee that a judge, lawyer, or law student needs the Committee's assistance. The Committee shall then take such action as authorized by the Guidelines.
- (c) The Supreme Court, the Indiana Commission on Judicial Qualifications, the Disciplinary Commission, the Board of Law Examiners, and the Administration of any Indiana law school may refer judges, lawyers, or law students to the Committee for assessment or treatment upon such terms authorized by the Guidelines.
- (d) The Committee may refer judges, lawyers, and law students to outside agencies or organizations for assessment or treatment upon such terms authorized by the Guidelines.

Section 9. Confidentiality.

- (a) All information, including records obtained by the Committee in the performance of its duty under these rules and as delegated by the Supreme Court of Indiana, shall be confidential, except as provided by the Program Guidelines.

- (b) Nothing in this section prevents the Committee from communicating statistical information which does not divulge the identity of an individual.
- (c) Violation of the confidentiality provisions of this rule shall be subject to disciplinary proceeding under Indiana Admission and Discipline Rules 12, 23 and 26.

Section 10. Immunity. The Committee, Executive Director, staff, and volunteers are not subject to civil suit for official acts done in good faith in furtherance of the Committee's work. Absent malice, a person who gives information to the Committee, staff or volunteers about a judge, lawyer or law student thought to be impaired is not subject to civil suit.

Adopted effective Oct. 14, 1997.

PROGRAM GUIDELINES FOR THE INDIANA JUDGES AND LAWYERS ASSISTANCE PROGRAM

The Indiana Judges and Lawyers Assistance Program (JLAP), established pursuant to Indiana Admission and Discipline Rule 31, provides assistance to judges, lawyers, and law students who suffer from physical or mental disabilities resulting from disease, chemical dependency, mental health problems, or age that impair their ability to practice or serve. JLAP neither engages in punishing nor disciplining members nor does it have the power or authority to do so. These policies and procedures have been adopted by JLAP and constitute guidelines approved by the Committee.

Section 1. Definitions.

The following terms or phrases shall have the meanings assigned in this section.

- (a) **Chairperson**—the person who is currently holding the office of chairperson of the committee.
- (b) **Clinical director**—clinical director of JLAP
- (c) **Committee**—the body comprised of the persons appointed by the Supreme Court of Indiana to administer JLAP pursuant to Admis.Disc.R. 31 § 1.
- (d) **Confidential information**—all information, whether oral, written, or electronically acquired, received by, or held in the possession of a representative, which in any manner (including identity) relates to a member who is impaired, believed to be impaired or possibly has an impairment.
- (e) **Contract participant**—a participant who has entered into a formal, written agreement with JLAP.
- (f) **Court**—the Supreme Court of Indiana
- (g) **Director**—executive director of JLAP
- (h) **Impaired**—having a physical or mental disability resulting from disease, chemical dependency, mental health problems, or age that could affect a member's ability to practice law or serve as a lawyer or judge.
- (i) **Independent source**—any person consulted to verify a JLAP contact who did not initiate the contact.
- (j) **JLAP**—the Indiana Judges and Lawyers Assistance Program as established pursuant to Admis.Disc.R. 31, its staff and volunteers.
- (k) **Members or members of the bar**—persons who are judges, lawyers, law students, or have applied for admission to the Indiana bar.
- (l) **Monitor**—Volunteer who oversees a contract participant's compliance with a JLAP monitoring agreement.
- (m) **Monitoring agreement**—a formal written agreement between a participant and JLAP that establishes the obligations of the participant and provides for the monitoring of the participant's compliance.
- (n) **Official referral**—referral of a member to JLAP by:
 - (1) The Indiana Supreme Court Disciplinary Commission;
 - (2) The Indiana Board of Law Examiners;
 - (3) The Indiana Commission on Judicial Qualifications; or
 - (4) Any Indiana law school administration as part of its disciplinary process.
- (o) **Participant**—any member who is referred to JLAP and, as a result thereof, receives a contact or communication from a representative.

- (p) **Permitted disclosures**—disclosure of confidential information
 - (1) Permitted or required pursuant to Rule 31 § 9(c);
 - (2) With the written consent of the participant or contract participant to whom such confidential information relates; or
 - (3) By or among representatives to carry out or accomplish the purposes of JLAP.
- (q) **Representative**—the director, clinical director, any member or employee of the committee or any volunteer.
- (r) **Self-referral**—a member’s direct contact with a representative to consider becoming a participant in JLAP not in furtherance of an official referral or a third party referral.
- (s) **Staff**—any and/or all of the employees of JLAP.
- (t) **Third party referral**—any referral of a member to JLAP other than an official referral or self-referral.
- (u) **Volunteer**—any person (including members of the committee) who has entered into an agreement with JLAP to assist in providing services in accordance with JLAP policies and procedures including completing any required application process.

Section 2. Purpose of JLAP.

Pursuant to Admis.Disc.R. 31 § 2, JLAP was established to assist impaired members in recovery; to educate the bench and bar; and to reduce the potential harm caused by impairment to the individual, the public, the profession, and the legal system.

These guidelines have been adopted with these purposes in mind. The work of JLAP is designed to be educational, confidential, and responsive to the special situations faced by impaired members of the legal profession.

The JLAP committee and the executive director may take any other action required to fulfill, yet remains consistent with, the stated purpose.

Section 3. Organization.

JLAP was established pursuant to Admis.Disc.R. 31. The Committee consists of fifteen (15) members appointed by the Court: seven (7) practicing attorneys, five (5) judges, one (1) law student, and two (2) judge(s), lawyer(s), or law student(s). The director operates under the direction of the committee. The clinical director, staff and volunteers operate under the direction of the director.

Section 4. Policies.

(a) JLAP designs and delivers programs to raise the awareness of the legal community about potential types of impairment and the identification, prevention and available resources for treatment and/or support.

(b) JLAP works toward increasing the likelihood of recovery by encouraging early identification, referral and treatment.

(c) Any person may report to the director, clinical director, or any member of the committee that a particular member of the bar needs the assistance of JLAP.

(d) JLAP encourages and welcomes contact by any means. However, the confidentiality of e-mail communications is subject to the limitations inherent in Internet transmissions.

(e) Neither JLAP, nor any representative, in their role as a volunteer, engages in the practice of law while fulfilling their JLAP responsibilities. Upon admission to inpatient or residential treatment, or with a physical disability case, JLAP may:

1. work with the participant to find friends and/or colleagues to assist with the law practice;
2. work with the relevant local and state bar association committees to assist with the practice;
3. should no other arrangements be possible, attempt to facilitate movement of a participant's case files to the respective clients upon receipt of written permission from the participant.

Section 5. Referral Procedures

(a) General Procedures

The state will be divided into geographical areas and a committee member or other designated representative shall serve as the primary contact for each area.

(b) Self-Referrals and Other Referrals

- 1) When the participant is a self referral, the following procedures apply:
 - i. JLAP may conduct an initial consultation to determine the nature of the participant's impairment;
 - ii. where appropriate, JLAP may make a referral to a qualified medical and/or clinical resource for further evaluation, assessment, and/or treatment;
 - iii. if appropriate, JLAP may assist in the development of a treatment plan, which may include participation in JLAP;
 - iv. with the participant's permission, a volunteer will be appointed to provide ongoing support.
- 2) When the member is referred by a third party the following procedures apply:
 - i. JLAP will obtain detailed information from the referral source regarding the nature of the impairment, the referral source's relationship to the member, and the circumstances giving rise to the referral. The identity of the referral source shall remain confidential unless the referral source instructs otherwise.
 - ii. JLAP may conduct further investigations to verify the circumstances that led to the referral by contacting independent sources to determine whether the member may be impaired.
 - iii. Any independent sources shall be approached in a manner to preserve, as far as possible, the privacy of the member.
 - iv. If it is determined the member may be impaired, JLAP will determine how the member will be approached with special attention given to involving local volunteers and/or local members of the bar who may already be involved in the case.
 - v. If the referred member is a judge, every effort shall be made to include at least one judge as a volunteer in the case.
- 3) If the impaired member agrees to treatment, or other levels of participation in JLAP, further assistance may include:
 - i. consultation with the participant, in-house assessment/evaluation, or referral for appropriate assessment/evaluation;
 - ii. assistance in locating treatment resources; and
 - iii. assistance in development of continuing care including support and referral to JLAP.
- 4) The director may terminate JLAP's involvement in any case at any time should it be determined that the member does not comply or refuses to participate and will not likely benefit from JLAP services at that time.

(c) Official Referrals

- 1) Upon receipt of an official referral for assessment/evaluation, JLAP will:
 - i. Determine if all appropriate releases and/or authorizations have been signed and obtained.
 - ii. Determine whether the requested assessment/evaluation will be done in house, referred out or a combination.
 - iii. Contact the official referral source for background information and direction, if necessary.
 - iv. Coordinate the assessment process with selected provider, participating as deemed appropriate on a case-by-case basis.
 - v. Release information and/or the final assessment/evaluation as allowed by written release.
- 2) Upon receipt of an official referral for a monitoring agreement JLAP will:
 - i. Determine if all appropriate signed releases/authorizations have been obtained.
 - ii. Review existing assessment(s) and/or determine whether initial or additional assessment(s) are necessary.
 - iii. Develop a monitoring agreement.
 - iv. Select and provide a monitor.
 - v. Meet with the participant, his/her attorney if appropriate, and the monitor prior to execution of the agreement to explain JLAP's role and the agreement terms and conditions.
 - vi. Report to the official referral source according to the terms of the referral and the monitoring agreement.

Section 6. Services.

(a) Any member is eligible for assistance and participation in JLAP. JLAP services will be provided without charge for initial consultation, in house assessment, referral, peer support.

(b) Referrals for medical and/or clinical evaluations, treatment, therapy and aftercare services will be provided; engagement of, and payment for, such services is solely the responsibility of the participant.

(c) Participants entering into a monitoring agreement with JLAP due to an official referral or upon their own initiative may be charged a monthly fee pursuant to JLAP's fee policy as approved by the Supreme Court from time to time.

Section 7. Treatment – Medical Assistance.

(a) JLAP endeavors to provide a network of therapeutic resources that includes a broad range of health care providers, therapists, and “self-help” support groups. JLAP will maintain a statewide list of available providers.

(b) With the written consent of the participant, JLAP may maintain contact with, and receive information from, the treatment provider. JLAP may remain involved in support during treatment, and shall endeavor to provide peer support and aftercare assistance in early recovery.

(c) In cases where it is determined the participant is not in need of inpatient or residential treatment, JLAP may provide referrals to outpatient counseling resources and self-help groups such as 12-step programs.

Section 8. Confidentiality.

(a) JLAP and its representatives will observe anonymity and confidentiality at all times. JLAP is an autonomous program, independent from the administrative offices of the Court or any other board or disciplinary organization, agency or authority.

(b) No disclosure of confidential information will be made by any representative except for permitted disclosures and those identified in Ind. Professional Conduct Rule 8.3.

Section 9. Role of Program Volunteers.

JLAP will maintain a statewide network of volunteers to assist the committee in carrying out the purposes of JLAP. Volunteers fulfill the following functions:

- (a) Assist in investigations, assessments, interventions, monitoring and support;
- (b) Appear on behalf of contract participants as witnesses at the discretion of the director;
- (c) Attend ongoing training on topics that enhance their ability to assist impaired members of the legal profession; and
- (d) Disseminate information about JLAP including the offer of presentations to local and specialty bars.

Adopted Dec. 21, 2001, effective April 1, 2002; amended July 1, 2003, effective Jan. 1, 2004.

Indiana Supreme Court Disciplinary Commission Rules Governing Attorney Trust Account Overdraft Reporting

The following rules and procedures, issued pursuant to the authority granted to the Indiana Supreme Court Disciplinary Commission by the Supreme Court of the State of Indiana in Admission and Discipline Rule 23, Sections 24 and 29(b), govern the administration of an attorney trust account overdraft reporting program in the State of Indiana.

Rule 1. Definitions

- A. "Financial institution" includes a bank, savings and loan association, credit union, savings bank, and any other business or person that accepts for deposit funds held in trust by attorneys.
- B. "Trust account" refers to any account maintained by an attorney admitted to practice law in the State of Indiana for the purpose of keeping funds belonging to clients or third parties separate from the attorney's own funds as required by Indiana Rule of Professional Conduct 1.15(a). It also means any account maintained by an attorney for funds held in trust in connection with a representation in any other fiduciary capacity, including as trustee, agent, guardian, executor, or otherwise.
- C. "Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of the State of Indiana.

Adopted Dec. 23, 1996, effective July 1, 1997.

Rule 2. Approval of Financial Institutions

- A. Indiana Admission and Discipline Rule 23, Section 29(a)(1) requires that attorneys maintain trust accounts only in financial institutions that are approved by the Disciplinary Commission. A financial institution shall be approved by the Disciplinary Commission as a depository for trust accounts if it files with the Disciplinary Commission a written agreement, in the form attached hereto as Exhibit A, whereby it agrees to report to the Disciplinary Commission whenever it has actual notice that any properly payable instrument is presented against a trust account containing insufficient funds, irrespective of whether or not the instrument is honored.
- B. The written agreement of any financial institution is binding upon all branches of the financial institution.
- C. The Disciplinary Commission will maintain a public listing of all approved financial institutions and will publish the same each year in the December issue of *Res Gestae*, the monthly journal of the Indiana State Bar Association. The names of approved financial institutions will be available at other times by written or telephone inquiry to the Disciplinary Commission.
- D. The written agreement of any financial institution will continue in full force and effect and be binding upon the financial institution until such time as the financial institution gives thirty (30) days notice of cancellation in writing to the Disciplinary Commission, or until such time as its approval is revoked by the Disciplinary Commission.

Adopted Dec. 23, 1996, effective July 1, 1997.

Rule 3. Disapproval and Revocation of Approval of Financial Institutions

- A. A financial institution shall not be approved in the first instance as a depository for trust accounts unless it submits to the Disciplinary Commission an agreement in the form attached hereto as Exhibit A that is binding upon all of its branches and signed by an officer with authority to act on behalf of the institution. The refusal of the Disciplinary Commission to approve a financial institution due to its failure or refusal to submit an executed written agreement in the form attached as Exhibit A is not appealable or otherwise subject to challenge.
- B. The approval of a financial institution shall be revoked and the institution shall be removed by the Disciplinary Commission from the list of approved financial institutions if it engages in a pattern of neglect or acts in bad faith in not complying with its obligations under the written agreement.
- C. The Executive Secretary shall communicate any decision to revoke the approval of a financial institution in writing by certified mail to the institution in care of the officer who signed the written agreement. The notice of revocation shall include a specific statement of facts setting forth the reasons in support of the revocation decision. Thereafter, the financial institution shall have a period of thirty (30) days from the date of receipt of the notice of revocation to file a written request with the Executive Secretary seeking reconsideration of the revocation decision. In the event an institution timely seeks reconsideration, the Disciplinary Commission shall appoint one of its members to act as hearing officer to take evidence. The Executive Secretary or designee shall act to defend the revocation decision. The hearing officer, after taking evidence, shall report findings and conclusions for review by the full Disciplinary Commission, whose decision in the matter shall be final. The approved status of a financial institution shall continue until such time as the reconsideration process is final.
- D. Once the approval of a financial institution has been revoked, the institution shall not thereafter be approved as a depository for trust accounts until such time as the institution petitions the Disciplinary Commission for approval and includes within the petition a plan for curing any deficiencies that caused its earlier revocation and for periodically reporting compliance with the plan in the future.

Adopted Dec. 23, 1996, effective July 1, 1997.

Rule 4. Duty to Notify Financial Institutions of Trust Accounts

- A. Every attorney shall notify each financial institution in which he or she maintains any trust account, as defined above, that the account is subject to the provisions of overdraft reporting by submitting a notice in the form attached as Exhibit B for each such account to the financial institution in which the account is maintained. Such notice must be provided on or before January 1, 1997 for each trust account then in existence and contemporaneously with the opening of any trust account opened thereafter. For each trust account, a lawyer or law firm shall maintain a copy of each such notice throughout the period of time that the account is open and for a period of five (5) years following closure of the account.
- B. In the case of a law firm that maintains one or more trust accounts in the name of the firm, only one notice from a member of the firm need be provided for each such trust account. However, every member of the firm is responsible for insuring that notice of each firm trust account is given to each financial institution wherein an account is maintained.
- C. No financial institution shall be responsible for forwarding a report of any overdraft on an account about which it has not received notice from the depositor attorney that it is a trust account subject to overdraft reporting.

Adopted Dec. 23, 1996, effective July 1, 1997.

Rule 5. Processing of Overdraft Reports by the Commission

- A. Whenever the Disciplinary Commission receives an overdraft notice from a financial institution, the Executive Secretary shall send a letter to the depositor attorney seeking a documented explanation of the overdraft within ten (10) business days. This letter is a demand for information, noncompliance with which is a violation of Professional Conduct Rule 8.1(b). If bank error is claimed by the attorney, a written statement from a bank officer must be submitted with the explanation. If office error is claimed by the attorney, affidavits from the appropriate office personnel must be submitted with the explanation.

- B. If the depositor attorney does not provide a timely explanation or if the explanation provided does not document the existence of bank error or isolated office inadvertence, the Executive Secretary shall present the matter to the full Disciplinary Commission to consider the issuance of a grievance pursuant to Indiana Admission and Discipline Rule 23, Section 10(a). Thereafter, the procedures of Admission and Discipline Rule 23 for the processing of grievances shall apply.

Adopted Dec. 23, 1996, effective July 1, 1997.

Rule 6. Miscellaneous Matters

- A. Admission and Discipline Rule 23, Section 29(e) requires that every attorney practicing or admitted to practice law in the State of Indiana is conclusively deemed to have consented to overdraft reporting and production requirements.
- B. Nothing in Admission and Discipline Rule 23, Section 29 precludes a financial institution from charging an attorney or law firm for the reasonable cost of producing overdraft reports and records.
- C. Any attorney who is admitted to practice law in another jurisdiction having attorney trust account overdraft notification rules that are substantially similar to the Indiana rules governing attorney trust account overdraft notification may apply to the Disciplinary Commission for exemption from compliance with these rules to the extent that the attorney maintains trust funds belonging to Indiana clients in a trust account in a foreign jurisdiction that is subject to overdraft reporting under the rules of that jurisdiction. Any such application for exemption shall be in writing and shall include:
 - 1) a copy of the rules from the other jurisdiction governing attorney trust account overdraft notification;
 - 2) a copy of the agreement between the applicable financial institution and the agency in the foreign jurisdiction that administers the overdraft notification program verifying that the financial institution participates in the foreign jurisdiction's attorney trust account notification program;
 - 3) a list of the names of all financial institutions, account names, and account numbers of all trust accounts maintained by the attorney in the foreign jurisdiction; and
 - 4) a certification under oath by the attorney that each such foreign trust account has been properly identified to the foreign financial institution as an attorney trust account subject to overdraft reporting.

Any attorney seeking exemption under the terms of this provision is under a continuing obligation to immediately report any changes in the information provided to the Disciplinary Commission.

- D. Admission and Discipline Rule 23, section 29(a)(6) contemplates that a designee who is not admitted to practice law in Indiana may be an authorized signatory on a trust account. In the event an attorney or law firm delegates trust account signature authority to any person who is not admitted to practice law in Indiana, such delegation on shall be accompanied by specific safeguards, including at a minimum the following.
 - a. All periodic account activity statements from the financial institution shall be delivered unopened to and reviewed by an attorney having supervisory authority over the non-attorney signatory; and
 - b. Responsibility for conducting periodic reconciliations between internal trust account records and periodic trust account activity statements from the financial institution shall be vested in a person who has no signature authority over the trust account.
- E. All communications from financial institutions to the Disciplinary Commission shall be directed to: Executive Secretary, Indiana Supreme Court Disciplinary Commission, 115 West Washington Street, Suite 1060, Indianapolis, Indiana 46204.

Adopted Dec. 23, 1996, effective July 1, 1997; amended Dec. 4, 1998, effective Jan. 1, 1999.

Exhibit A. Trust Account Overdraft Reporting Agreement

TO: INDIANA SUPREME COURT DISCIPLINARY COMMISSION
115 West Washington Street
Suite 1060
Indianapolis, Indiana 46204

The undersigned, being a duly authorized officer of _____, a financial institution doing business in the State of Indiana, and the agent of the named financial institution specifically authorized to enter into this agreement, hereby applies to be approved to receive attorney trust accounts in the State of Indiana. In consideration of the Indiana Supreme Court Disciplinary Commission's approval of the named financial institution, the institution agrees to comply with the reporting requirements for such institution as set forth in Indiana Admission and Discipline Rule 23, § 29(b) through (g) and the Rules Governing Trust Account Overdraft Reporting promulgated by the Disciplinary Commission, as now in effect and as hereafter amended from time to time.

Specifically, the named financial institution agrees:

- (1) To report to the Indiana Supreme Court Disciplinary Commission in the event it has actual notice that any properly payable attorney trust account instrument is presented against insufficient funds, irrespective of whether or not the instrument is honored;
- (2) That all such reports shall be in substantially the following format:
 - (a) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor and should include a copy of the dishonored instrument, if such a copy is normally provided to the depositor;
 - (b) in the case of an instrument that is presented against insufficient funds but which instrument is honored, the report shall identify the financial institution, the depositor attorney or law firm, the account number, the date of presentation for payment, the date paid, and the amount of the overdraft created thereby.
- (3) That all such reports shall be made within the following time periods:
 - (a) in the case of a dishonored instrument, simultaneously with, and within the time provided by law for, notice of dishonor;
 - (b) in the case of an instrument that is presented against insufficient funds but which instrument is honored, within five (5) banking days of the date of presentation for payment against insufficient funds.

This agreement shall apply to all branches of the named financial institution and shall not be canceled except upon thirty (30) days notice in writing to the Executive Secretary, Indiana Supreme Court Disciplinary Commission, 115 West Washington Street, Suite 1060, Indianapolis, Indiana 46204.

Name and Address of Main Branch of Financial Institution:

DATE: _____

Signature of Authorized Official

CORPORATE

Printed or Typed Name of Authorized Official

SEAL

Title or Position of Authorized Official

ACKNOWLEDGMENT

STATE OF INDIANA)
) ss:
COUNTY OF _____)

On the ____ day of _____, 199____, before me, a Notary Public in and for the State of Indiana, personally appeared the above-named individual, known to me to be the person executing the foregoing instrument, and acknowledged and executed said instrument as his/her free and voluntary act and deed.

Notary Public (signature)

Notary Public (printed or typed)

My Commission Expires: _____
County of Residence: _____

ACCEPTANCE

The named financial institution is hereby approved by the Indiana Supreme Court Disciplinary Commission as a depository for trust accounts in the State of Indiana until such time as this agreement is canceled upon thirty (30) days' written notice to the Commission by the institution or is revoked by action of the Disciplinary Commission.

DATE: _____

Executive Secretary
Indiana Supreme Court Disciplinary Commission

Adopted Dec. 23, 1996, effective July 1, 1997.

Exhibit B. Attorney Trust Account Notification

Name of Attorney

Attorney Number

Name of Law Firm

Business Address

City

State

Zip Code

Name of Financial Institution

Business Address

City State Zip Code

Name of Account

Account Number

_____ New _____ Existing

Type of Account:

_____ Trust _____ Guardian

_____ Escrow _____ Estate

_____ Other _____
(Please Describe)

The undersigned hereby certifies that he/she is an attorney licensed to practice law in the State of Indiana and that the information indicated above provided to his/her financial institution is accurate. This information is provided to permit the financial institution to report all overdraft or insufficient funds occurrences to the Indiana Supreme Court Disciplinary Commission pursuant to Indiana Admission and Discipline Rule 23, Section 29.

Date: _____
Signature

Adopted Dec. 23, 1996, effective July 1, 1997.